TUESDAY, SEPTEMBER 20, 2016
MEETING AGENDA

Landon State Office Bld.  
900 SW Jackson St.  
Board Room, Ste 102  
Topeka, KS 66612

AI—Action Item  
RI—Receive Item, for possible action  
DI—Discussion Item  
IO—Information Only

10:00 a.m.  
1. Call to Order  
2. Roll Call  
3. Mission Statement, Moment of Silence and Pledge of Allegiance  
(AI) 4. Approval of Agenda  
(AI) 5. Approval of Aug. 4 and Aug. 9-10 Minutes  
pages 7 & 9

10:05 a.m.  
(IO) 6. Commissioner’s Report  
page 23

10:30 a.m.  
(IO) 7. Citizens’ Open Forum  
page 25

11:00 a.m.  
(IO) 8. Annual Career and Technical Education program review  
page 27

11:30 a.m.  
Break

11:35 a.m.  
(AI) 9. Act on History/Government/Social Studies assessment performance levels and cut scores  
page 29

11:50 a.m.  
(AI) 10. Act to submit amended Emergency Safety Intervention regulations to Department of Administration and Office of the Attorney General for review  
page 31

12:05 p.m.  
Lunch

1:30 p.m.  
(IO) 11. Information on AdvancED accreditation protocol and standards  
page 47

2:00 p.m.  
(RI) 12. Receive Kansas Curricular Standards for Library/Information and Technology  
page 49

2:20 p.m.  
(IO) 13. Information on school bus rider tracking system developed by USD 415 Hiawatha  
page 65

2:45 p.m.  
(IO) 14. Update on Kansans CAN communication tools  
page 67
Break

3:15 p.m.

15. Update on Transition to College Algebra Pilot Program page 69

3:35 p.m.

16. Consent Agenda

**Routine Items**

- a. Receive monthly personnel report page 71
- b. Act on appointments to unclassified special project positions page 73
- c. Act on recommendations of the Licensure Review Committee page 75
- d. Act on recommendations for licensure waivers page 79
- e. Act on recommendation for Visiting Scholar license page 81
- f. Act on Education Flexibility (Ed-Flex) Waiver request page 83
- g. Act on license for commercial driver training school page 85
- h. Act to approve Kansas in-service education plan page 87
- i. Act on requests from the following USDs to hold bond elections:
  - USD 310 Fairfield, USD 320 Wamego, USD 500 Kansas City page 89
- j. Act on requests from USD 320 Wamego and USD 500 Kansas City for capital improvement (bond and interest) state aid page 95
- k. Act on contract with the Kansas Association of Independent and Religious Schools for the reimbursement of funds for professional development of non-public school teachers and leaders page 101
- l. Act to initiate contract bid process for implementing social/emotional supports into Kansas College and Career Competencies page 103
- m. Authorize Kansas State School for the Blind (KSSB) contract renewal with Accessible Arts, Inc. for related services and facilities use page 105
- n. Authorize KSSB contract renewal with Baer Wilson and Company, LLC, for counseling/evaluation services page 107
- o. Authorize KSSB contract renewal with Providence Medical Center for occupational therapy and physical therapy services page 109
- p. Authorize KSSB contract with Dr. Linda Lawrence for low vision clinic services and teacher training clinics page 111

3:45 p.m.

RECESS
WEDNESDAY, SEPTEMBER 21, 2016
MEETING AGENDA

Landon State Office Bld.
900 SW Jackson St.
Board Room, Ste 102
Topeka, KS 66612

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<tr>
<td>1:00 p.m.</td>
<td>1. Call to Order</td>
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<td>2. Roll Call</td>
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<td>(AI) 3. Approval of Agenda</td>
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<td>1:05 p.m.</td>
<td>(AI) 4. Act on recommendations of the Professional Practices Commission pg 115</td>
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<td>1:20 p.m.</td>
<td>(DI) 5. Discuss 2017 Board Meeting Dates page 285</td>
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<td>1:40 p.m.</td>
<td>(IO) 6. Board Reports &amp; Requests for Future Agenda Items page 289</td>
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<td>2:25 p.m.</td>
<td>(AI) 7. Act on Board Member Travel page 307</td>
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Next Meeting: October 18 and 19, 2016 in Topeka

OPTIONAL PRE-MEETING ACTIVITY
9 a.m. Kansas Supreme Court oral arguments on school finance case
Kansas Judicial Center, 301 SW 10th Ave., Topeka
VISION
Kansas leads the world in the success of each student.

MISSION
To prepare Kansas students for lifelong success through rigorous, quality academic instruction, career training and character development according to each student's gifts and talents.

MOTTO
Kansans CAN.

SUCCESSFUL KANSAS HIGH SCHOOL GRADUATE
A successful Kansas high school graduate has the
- Academic preparation,
- Cognitive preparation,
- Technical skills,
- Employability skills and
- Civic engagement
to be successful in postsecondary education, in the attainment of an industry recognized certification or in the workforce, without the need for remediation.

OUTCOMES FOR MEASURING PROGRESS
- Kindergarten readiness
- Individual Plan of Study focused on career interest
- High school graduation rates
- Postsecondary completion/attendance
- Social/emotional growth measured locally
CALL TO ORDER
Chairman Jim McNiece called the Aug. 4, 2016 Special Meeting of the State Board of Education to order at 2:05 p.m. The meeting was conducted by conference call and originated from Room 254 in the Landon State Office Building, 900 SW Jackson St., Topeka, Kansas.

ROLL CALL
Board members Jim Porter and Carolyn Wims-Campbell appeared in person. The following Board members participated by phone:

Kathy Busch
Jim McNiece
Steve Roberts

Janet Waugh
Ken Willard

John Bacon, Sally Cauble and Deena Horst did not participate in the call. KSDE staff present for the meeting were Randy Watson, Dale Dennis, Craig Neuenswander, Denise Kahler and Peggy Hill.

APPROVAL OF AGENDA
Ms. Wims-Campbell moved to approve the agenda. Mrs. Busch seconded. Motion carried 6-0, with Mr. Bacon, Mrs. Cauble and Mrs. Horst absent. Mr. Willard joined the conference call after the vote on the agenda.

ACT ON SCHOOL DISTRICT APPLICATIONS FOR 2016-17 EXTRAORDINARY NEED STATE AID
Chairman McNiece expressed gratitude to committee members for their work to review applications and conduct hearings Aug. 2 and 3. The hearing committee consisted of the following individuals: Deputy Commissioner Dale Dennis, School Finance Director Craig Neuenswander, retired USD 337 Superintendent John Rundle, and State Board of Education member Jim Porter.

Mr. Dennis summarized the committee’s review process. The group evaluated 34 school district applications and conducted individual hearings either in person or by phone. Mr. Porter commented on the thoroughness of the applications and candidates’ passion for providing for their students. The committee’s recommendations were presented in a table format, listing the amount of money each school district would qualify for based on the guidelines plus a justification of the allocation. Mr. Dennis answered questions about USD 230 Spring Hill’s request, the difference between approved amounts in the general fund and local option budget fund columns, and the impending sale of the state’s Bioscience Authority, which will impact the amount of extraordinary need state aid available.

Mr. Porter moved that the Kansas State Board of Education approve the individual school district allocations for extraordinary need state aid for the 2016-17 school year as recommended by the hearing committee in the amount not to exceed $13 million. Mrs. Busch seconded. Motion carried 7-0 with Mr. Bacon, Mrs. Cauble and Mrs. Horst absent. If insufficient funds are appropriated for this program, the amount would be prorated based upon the amount of the allocation.

The individual school district allocations were approved as follows: USD 203 Piper $120,000; USD 204 Bonner Springs $166,000; USD 209 Moscow $192,469; USD 210 Hugoton $546,000; USD 215 Lakin $269,509; USD 216 Deerfield $141,119; USD 217 Rolla $176,549; USD 227 Hodgeman County $14,421;
USD 230 Spring Hill $848,580; USD 231 Gardner-Edgerton $300,000; USD 250 Pittsburg $75,000; USD 255 South Barber $219,000; USD 256 Marmaton Valley $247,100; USD 259 Wichita $686,510; USD 262 Valley Center $98,000; USD 265 Goddard $350,000; USD 271 Stockton $62,000; USD 283 Elk Valley $230,000; USD 303 Ness City $50,000; USD 323 Rock Creek $178,060; USD 361 Chaparral $565,066; USD 369 Burrrton $35,400; USD 374 Sublette $198,791; USD 399 Paradise $71,671; USD 401 Chase-Raymond $84,505; USD 445 Coffeyville $184,601; USD 452 Stanton County $266,636; USD 458 Basheor-Linwood $437,102; USD 466 Scott County $150,000; USD 491 Eudora $100,000; USD 507 Satanta $163,738. Total: $7,227,827.

The actual amount of the extraordinary need state aid appropriation will not be known until the latter part of 2016 following the sale of the state’s Bioscience Authority. Any revenue received above $25 million from the sale of the Bioscience Authority would be appropriated towards extraordinary need state aid up to $38 million or a total of $13 million. If the sale is less than $25 million, there will be no revenue available for extraordinary need state aid.

ADJOURNMENT
Chairman McNiece adjourned the meeting at 2:18 p.m.

_____________________________  ______________________________
Jim McNiece, Chairman                  Peggy Hill, Secretary
CALL TO ORDER
Chairman Jim McNiece called the monthly meeting of the State Board of Education to order at 10 a.m. Tuesday, Aug. 9, 2016, in the Board Room at the Landon State Office Building, 900 SW Jackson St., Topeka, Kansas. Mr. McNiece directed encouraging remarks to all students and school personnel as they begin a new school year.

ROLL CALL
Board members present were:
- Kathy Busch
- Carolyn Wims-Campbell
- Sally Cauble
- Deena Horst
- Jim McNiece
- Jim Porter
- Janet Waugh
- Ken Willard
- Steve Roberts participated in the meeting by phone. John Bacon was absent.

STATE BOARD MISSION STATEMENT, MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE
Chairman McNiece read both the Board’s Mission Statement and Kansans CAN Vision Statement. He then asked for a moment of silence after which the Pledge of Allegiance was recited.

APPROVAL OF AMENDED AGENDA
Chairman McNiece announced the need to alter Agenda Item 13 “Act on recommendations of the Professional Practices Commission.” Board Attorney Mark Ferguson explained that counsel for the licensee in the PPC case of Gage McGarry provided a written request to present an oral argument. Mr. Ferguson recommended the Board consider the request for oral argument in August and act on the merits of the case in September. Mrs. Busch moved to amend the agenda to consider the request and defer action on the recommendations of the PPC. Mr. Willard seconded. Motion carried 9-0. Mrs. Horst moved to approve the agenda as amended. Ms. Wims-Campbell seconded. Motion carried 9-0.

APPROVAL OF THE JULY MEETING MINUTES
Mrs. Horst moved to approve the minutes of the July Board meeting. Mr. Porter seconded. Motion carried 9-0.

COMMISSIONER’S REPORT
Commissioner Randy Watson restated the five parts of the Board’s definition of a successful Kansas high school graduate: academic preparation, cognitive preparation, technical skills, employability skills and civic engagement. During visits to schools, he reminds educators about the need for balance among these areas which are all linked to the five vision outcomes. Dr. Watson spoke about the aspirational goal of 100 percent high school graduation and the need to look at graduation rates in combination with postsecondary completion. He illustrated statistically the drop in completers as a class of students progresses through high school and on to college. Finally, he discussed the changes in school leadership reflected in the number of superintendents and principals in new positions.

CITIZENS’ OPEN FORUM
Chairman McNiece declared the Citizens’ Forum open at 10:33 a.m. There was one speaker: John Richard Schrock, Emporia — discussing Kansas Association of Biology Teachers Fall Conference and opposition to comprehensive science license. Written public comment was supplied by the Kansas
Association for the Education of Young Children. The forum was closed at 10:38 a.m.

**REPORT FROM EDUCATION FELLOWS ON SUMMER TRAININGS TO SCHOOL DISTRICTS**

(00:37:55) The Education Fellows program was created in spring 2016 as one way to use distinguished Kansas educators to help their peers better understand the outcomes associated with the Kansans CAN vision for leading the world in the success of each student. Members of the three Education Fellows teams spoke at the meeting about their summer work with school administrators and teachers across the state. They used six-word expressions to describe their experiences. These ranged from purposeful networking among districts to helping set stretch goals. School districts were able to select from available workshop dates and receive the training at no charge. Board members commented on the ongoing need for the Kansans CAN vision to reach teachers.

**BREAK**

(01:21:50) Board members took a 10-minute break at 11:20 a.m.

**ACT ON INNOVATIVE DISTRICT APPLICATION FROM USD 484 FREDONIA**

Mrs. Horst moved to approve the application of USD 484 Fredonia and grant authority for the district to operate as an Innovative District working within the Bylaws of the Coalition of Innovative School Districts’ Board. Ms. Wims-Campbell seconded. Motion carried 8-1 with Mrs. Cauble in opposition. Discussion centered on identifying legitimate barriers and reducing roadblocks for the benefit of all districts.

**RECEIVE AMENDMENTS TO EMERGENCY SAFETY INTERVENTION REGULATIONS TO COMPLY WITH NEW LAW**

(01:29:27) Laura Jurgensen of KSDE’s Early Childhood, Special Education and Title Services team reviewed amendments to the emergency safety intervention statutes, which went into effect July 1, 2016. These statutory changes regarding the use of seclusion and restraint in schools necessitate changes to the Kansas State Board of Education’s ESI regulations K.A.R. 91-42-1 to –7. Mrs. Jurgensen outlined the changes plus an item of clarifying language in 91-42-3(h) related to use of physical escort and time out. Board members will act on the next steps in the regulations adoption process next month.

**LUNCH**

Chairman McNiece recessed for lunch at 11:50 a.m. The afternoon session resumed at 1:30 p.m.

**ACT ON RECOMMENDATIONS OF THE BLUE RIBBON TASK FORCE ON TEACHER VACANCIES AND SUPPLY**

(00:00:57) Dr. Ken Weaver, co-chair of the Blue Ribbon Task Force, stated that the Task Force’s “final report” was the beginning of opportunities to analyze data and efforts in order to provide a solid supply of teachers in Kansas. He reiterated the importance of recruitment and retention, particularly in the cluster areas where vacancies exist. Board members agreed that more time is needed to study the issues uncovered in the report. Teacher Licensure and Accreditation Director Scott Myers and Assistant Director Susan Helbert noted there were 61 recommendations included in the Task Force’s report submitted to the State Board last month. The recommendations were for immediate, intermediate and long-term tasks to address teacher vacancies and supply.

Dr. Myers and Mrs. Helbert provided a handout addressing each of the recommendations, KSDE’s response, considerations and estimated timeline for implementation. This included both direct action and ancillary involvement. Multiple groups were identified as having a partnership role in the work. Suggestions for next steps were presented. The Professional Standards Board met on Aug. 4 to discuss its supportive role and the possibility of establishing a standing subcommittee.

(00:52:58) Mrs. Cauble moved to accept the report of the Blue Ribbon Task Force on teacher vacancies and supply. Mrs. Horst seconded. Motion carried 9-0.
Board members discussed the nationwide concerns of teacher shortages, the importance of retaining high quality teachers, the benefits of mentor programs for beginning teachers, a broader focus on licensing options, and a desire to conduct a Board retreat for more in-depth conversations.

Mr. Willard moved to create the Teacher Vacancy and Supply Committee, a standing subcommittee of the Professional Standards Board. It was further moved to refer the Blue Ribbon Task Force Report to the Professional Standards Board for evaluation. Lastly, it was moved to direct the Professional Standards Board to study and present a range of options for addressing the specific licensing issues mentioned in the Blue Ribbon Task Force Report: Elementary restricted, Multi-year first license, Student teaching options and Comprehensive science. Mr. Porter seconded. Motion carried 9-0. Chairman McNiece assigned Kathy Busch to represent the State Board on the committee and asked for a report be given to the Board after each meeting.

Board members took a break from 2:50 to 3 p.m.

**UPDATE ON MATH AND ENGLISH LANGUAGE ARTS STANDARDS AND REVIEW OF ADOPTION PROCESS**

Curricular standards are reviewed approximately every seven years. They are divided into the categories of assessed standards that students in the state are assessed on annually (i.e. English language arts) and model standards (i.e. health). KSDE Assistant Director Jeannette Nobo explained the adoption process and presented a timeline of curricular standards currently under review. She introduced new education program consultants Lizette Burks (science) and Sara Schafer (math). Melissa Fast and Suzy Myers, who oversee the review of math and English language arts standards respectively, described the work in progress and provided lists of committee workgroup members. They then answered questions, providing an assurance that the standards are specific to Kansas. The Board will receive preliminary drafts of math and ELA standards early in 2017 before regional meetings are conducted and final drafts are prepared.

**ACTION ON REQUEST TO PRESENT ORAL ARGUMENT**

Action on recommendations of the Professional Practices Commission was deferred during amendment of the Tuesday agenda. Board Attorney Mark Ferguson explained that counsel for licensee Gary McGarry, whose PPC case was to be acted upon this month, had made a written request to present oral argument. Mr. Ferguson noted oral argument is permissive, but not required by statute. Mrs. Busch moved to reject the request of counsel to permit oral argument to the Board in September, 2016. Mrs. Cauble seconded. Motion carried 8-0-1 with Mr. Roberts abstaining. The merits of the McGarry case and recommendations of the PPC will be acted upon in September.

**RECEIVE HISTORY/GOVERNMENT/SOCIAL STUDIES ASSESSMENT PERFORMANCE LEVELS AND CUT SCORES**

Education Program Consultant Don Gifford explained the test design for the history/government/social studies state assessment. Mary Matthew, Director of the Kansas Assessment Program at CETE, was introduced to describe the method used in setting cut scores for the four performance or achievement levels. A panel of teachers from across the state met to go through the standard setting process and determine the percentage weight for each part of the test. The history/government/social studies assessment is given to students in 6th, 8th and 11th grades. Preliminary impact data was provided for each testing grade level. Board members questioned the 50 percent weighting given to the on demand writing response. A vote on the HGSS performance levels and cut scores is expected in September.

Mrs. Busch briefly left the meeting and was absent for the vote on the next three agenda items.
ACTION ON NASBE MEMBERSHIP DUES FOR 2017
Mr. Willard moved to approve payment of dues for calendar year 2017 for membership in the National Association of State Boards of Education (NASBE) and the National Council of State Education Attorneys at a cost of $24,985. Mrs. Horst seconded. Motion carried 8-0. NASBE is the only national membership organization whose members are solely from the state boards of education.

ACTION ON APPOINTMENT OF DELEGATE TO NASBE ANNUAL CONFERENCE
The annual conference of the National Association of State Boards of Education will be Oct. 19-22, 2016 in Kansas City, Missouri. Kansas is a member of NASBE and therefore may have a representative at the delegate assembly to vote on NASBE policy and bylaw changes as well as officer positions. Mrs. Cauble moved to appoint Carolyn Wims-Campbell as Kansas’ voting delegate at the conference. Mr. Porter seconded. Motion carried 8-0. Mrs. Cauble moved to appoint Deena Horst as the delegate alternate. Mr. Willard seconded. Motion carried 8-0.

CONSENT AGENDA
Mrs. Horst moved to approve the Consent Agenda as presented. Mr. Porter seconded. Motion carried 8-0. In the Consent Agenda, the Board:

- received the monthly Personnel Report for July.
- received 4th quarter reports (FY 2016) from the Kansas State School for the Blind and Kansas State School for the Deaf.
- approved the Regional Multi-Hazard Mitigation Plan set forth in the Resolution submitted by the Kansas State School for the Blind and Kansas State School for the Deaf.
- approved granting Visiting Scholar licenses to Ann Rabe and USD 229 Blue Valley for Latin instruction; Anthony Brucato and Kansas Schools for the Deaf and Blind for counseling services; and Khalil Mekkaoui and Southeast Kansas Education Service Center (renewal) for Arabic language instruction. These licenses are valid for the 2016-17 school year.
- approved local in-service education plans for USD 271 Stockton and USD 350 St. John-Hudson.
- approved one-year Education Flexibility Partnership (Ed-Flex) waiver requests for USD 207 Fort Leavenworth and USD 475 Geary County Schools to allow them to exceed the 15 percent Title I carryover limitation of once every three years.
- authorized USD 284, Chase County schools, Chase County, to hold an election on the question of issuing bonds in excess of the district’s general bond debt limitation.
- approved recommendation for funding the Migrant Family Literacy Grant request of USD 102 Cimarron in the amount of $78,000.
- approved recommendations for funding the 2016-17 McKinney-Vento Children and Youth Homeless grants for the following districts in the amounts listed: USD 202 Turner $10,000; USD 233 Olathe $38,500; USD 259 Wichita $142,000; USD 261 Haysville $24,000; USD 383 Manhattan-Ogden $25,500; USD 457 Garden City $22,000; USD 475 Geary County $23,000; USD 500 Kansas City $102,000; USD 501 Topeka $45,753.

authorized the Commissioner of Education to negotiate and
- authorize contracts for out-of-state tuition for the 2016-17 school year for students attending Kansas State School for the Blind. KSSB will receive tuition payments from the following districts in Missouri: Hardin-Central — $10,640 for one day student; Liberty — $20,000 for one day student; and Lawson — $40,000 for one day student;
- authorize contract for out-of-state tuition for the 2016-17 school year for students attending Kansas State School for the Deaf. KSSD will receive tuition payments from Center School District,
Kansas City, Missouri totalling $36,960 for two students, plus additional services as listed on the IEPs at a cost of $60 per hour.

Mrs. Busch returned to the meeting. Mr. Roberts disconnected from phone participation.

BOARD REPORTS AND REQUESTS FOR FUTURE AGENDA ITEMS
Communications — Mrs. Cauble announced a committee meeting Wednesday afternoon. She would like to discuss increasing awareness of the Kansans CAN vision to teachers.

Extraordinary Need State Aid — Mr. Porter reported on the prior week’s committee meeting to review district applications for extraordinary need state aid. He reflected on the quality of leadership represented with the applications and expressed concerns that no money would be available.

Board Attorney Mark Ferguson referenced his monthly summary and offered to answer questions. He reminded members of the recent dismissal of the Petrella lawsuit.

During individual Board member reports, Mrs. Horst reported on the Coalition of Innovative School Districts’ most recent meeting; Mr. Porter attended the Professional Standards Board meeting Aug. 4 to review the Blue Ribbon Task Force Report; Mrs. Waugh recognized the work of Denise Kahler and the KSDE communications team; Mrs. Busch attended the ESEA meeting during the Summer Leadership Conference and a meeting of the group Educators Rising.

In his Chairman’s Report, Mr. McNiece assigned Mrs. Waugh to serve on the Attorney General’s Juvenile Justice committee. He mentioned several NASBE activities including the New Member Institute held in July and the annual conference Oct. 19-22 in Kansas City. He called attention to information provided on several upcoming events.

The next State Board meeting is Sept. 20 and 21. Mrs. Horst moved to change the start time on the 21st to 1 p.m. with the optional morning activity of attending the oral arguments on the Gannon school finance case at the Kansas Supreme Court. Ms. Wims-Campbell seconded. Motion carried 8-0.

Requests for Future Agenda Items:
Mr. McNiece requested a Board retreat to further discuss teacher vacancy and supply as the committee work continues. Mrs. Busch requested that the group Educators Rising give a presentation.

BOARD MEMBER TRAVEL
Additions to the travel requests were: Kansas Teacher of the Year regional banquets in September—Mrs. Busch (Wichita), Mrs. Cauble and Mr. Willard (Salina and Wichita), Ms. Wims-Campbell (Topeka), Mr. Porter (Topeka, Wichita and Overland Park); NASBE Annual Conference Oct. 20-22 — Mrs. Busch, Mrs. Cauble, Mrs. Waugh, Mrs. Horst, Mr. Willard (20th only); Interstate Migrant Education Council meeting Oct. 3-5 — Mrs. Cauble; Kansas Alliance for Educational Advocacy Aug. 30 — Mr. McNiece; Juvenile Justice meeting Aug. 11 — Mrs. Waugh. Mr. Willard moved to approve the travel requests and additions. Mrs. Busch seconded. Motion carried 8-0.

ADJOURNMENT
Chairman McNiece adjourned the meeting at 5:14 p.m. The next regular State Board meeting will be Sept. 20 and 21 in Topeka. This will be the third week of the month.
WORK SESSION ON KINDERGARTEN READINESS — WEDNESDAY, AUG. 10, 2016

The Kansas State Board of Education convened at 9 a.m. on Wednesday, Aug. 10, 2016, at the offices of the Kansas State High School Activities Association, 601 SW Commerce Place, Topeka, Kansas. Board members in attendance were: Chairman McNiece, Vice Chair Wims-Campbell, Mrs. Busch, Mrs. Cauble, Mrs. Horst, Mr. Porter, Mr. Roberts, Mrs. Waugh and Mr. Willard. Member John Bacon was absent.

Presenters were Tammy Mitchell, KSDE Assistant Director Kindergarten Readiness and School Improvement, and Amy Blosser, Early Childhood Director for the Children’s Cabinet and Trust Fund. The vision outcome kindergarten readiness was the focus of the session to review the work accomplished to date and discuss the kindergarten screener pilot project. A kindergarten readiness workgroup exists representing multiple agencies involved with early childhood programs and services. Research was conducted on variations of a kindergarten screener tool. The recommendation was to use Ages and Stages Questionnaire. This would not be an assessment, but rather provide a snapshot of where children are upon entry to kindergarten in areas such as communication, problem solving, motor skills and social emotional areas of development. The questionnaire, which would be completed by parents, was previewed and discussed. Board members asked questions about the tracking of students attending preschools, ownership of data collected through the questionnaire, use of a uniform screener across districts, and pitfalls of a standardized product. School districts participating in the pilot this fall will be trained in use of the screener. Board members requested that a random sampling of participants (parents and teachers) report to the State Board on the process.

The work session adjourned at 11:25 a.m.
CALL TO ORDER
Chairman Jim McNiece called the monthly meeting of the State Board of Education to order at 10 a.m. Tuesday, July 12, 2016, in the Board Room at the Landon State Office Building, 900 SW Jackson St., Topeka, Kansas. Mr. McNiece welcomed those in attendance, including participants in the Professional Educational Leadership Academy.

ROLL CALL
All members were present:
John Bacon  Jim McNiece
Kathy Busch  Jim Porter
Carolyn Wims-Campbell  Steve Roberts
Sally Cauble  Janet Waugh
Deena Horst  Ken Willard

STATE BOARD MISSION STATEMENT, MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE
Chairman McNiece read both the Board’s Mission Statement and Kansans CAN Vision Statement. He then asked for a moment of silence after which the Pledge of Allegiance was recited.

APPROVAL OF AGENDA
Mrs. Horst moved to approve the July 12 agenda as presented. Mrs. Busch seconded. Motion carried 9-1 with Mr. Roberts in opposition.

APPROVAL OF THE JUNE MEETING MINUTES
Mrs. Waugh moved to approve the minutes of the June Board meeting. Ms. Wims-Campbell seconded. Motion carried 10-0.

COMMISSIONER’S REPORT
As the Kansans CAN vision nears its one-year mark, Commissioner Randy Watson re-emphasized creating a cohesive message about balancing the academic and non-academic needs of students. He reported on a third-party review of the Kansas State Department of Education to evaluate its current capacity to meet the delivery challenges and achieve the goals of leading the world in the success of each student. He invited representatives from the Council of Chief State School Officers (CCSSO) and Education Delivery Institute (EDI) to conduct the review. The team interviewed staff and key stakeholders during a series of focus groups last month. Four key areas of work were identified centering on plan development, organizational structure, communication and organizational effectiveness. Dr. Watson outlined some of the review team’s recommendations preparing for the second year of vision work, focus on the outcomes and tightening the relationship between KSDE and the State Board.

CITIZENS’ OPEN FORUM
Chairman McNiece declared the Citizens’ Forum open at 10:32 a.m. There were no speakers for public comment. The forum was closed at 10:33 a.m.

UPDATE ON TRANSITION TO EVERY STUDENT SUCCEEDS ACT
The Every Student Succeeds Act (ESSA) arose out of the reauthorization of the federal Elementary and Secondary Education Act. ESSA replaced No Child Left Behind. Several changes will occur under the new act, and the transition is ongoing. Full implementation is scheduled for 2017-18 which aligns with
Year Zero of the new Kansas accreditation model. Deputy Commissioner Brad Neuenswander presented information on ESSA’s proposed rulemaking, the deadlines to submit state plans and the advisory council’s work on different components of ESSA. The next council meeting is July 26 in Wichita to continue work on the Kansas plan. Mr. Neuenswander answered questions about Annual Measures of Student Success (AMOSS) and the monitoring of student growth over time.

**BREAK**

Board members took a break until 11:20 a.m.

**RECEIVE BLUE RIBBON TASK FORCE REPORT AND RECOMMENDATIONS ON TEACHER VACANCIES AND SUPPLY**

Commissioner Watson this spring assembled a Blue Ribbon Task Force to study teacher vacancies and supply in Kansas. The task force was comprised of 28 education professionals representing various stakeholders, including higher education and public schools. They met four times. Dr. Ken Weaver, Dean of The Teachers College at Emporia State University, and Rudy Perez, Principal at Norton Community High School, co-chaired the task force. They presented the group’s findings on trends and patterns to the State Board. The report included information on unfilled vacancies, educators leaving the teaching profession, those moving to other school districts, number of teacher education majors vs completers, and retention. Comparison data was shown according to regions of the state. As part of the report, recommendations were provided and divided into the categories of immediate, intermediate and long-term implementation. Board members discussed the task force’s findings and the national concern for educator shortages, asked for additional research comparing Kansas’ data to that of other states including salaries, and offered suggestions for follow-up. The Board is expected to act upon the recommendations at the August meeting.

**LUNCH**

Chairman McNiece recessed for lunch at 12:32 p.m. The afternoon session resumed at 1:30 p.m.

**RECEIVE RECOMMENDATION FOR APPROVAL OF INNOVATIVE DISTRICT APPLICANT**

The Coalition of Innovative Districts Act, created by the legislature in 2013, allows a percentage of the state’s school districts to opt out of most state laws, rules and regulations in order to improve student achievement. USD 484 Fredonia has applied for Innovative District status. Coalition chair Bill Mullins, Superintendent of USD 364 Marysville, noted that applications are now being accepted throughout the year, rather than just during one month. Brian Smith, Superintendent of USD 484 Fredonia, reviewed the reasons his district seeks to join the six other districts in the Coalition. He and two USD 484 staff members explained the goals within their application and then answered questions. The Coalition unanimously approved the request so now the State Board has 90 days to either grant or deny the granting of authority to operate as an Innovative District.

**ACTION ON RECOMMENDATIONS OF THE PROFESSIONAL PRACTICES COMMISSION**

The Professional Practices Commission was represented by Chair Linda Sieck, who brought forth four cases that have been before the PPC. She answered questions about the hearing proceedings. Ms. Wims-Campbell suggested more details be included in the PPC report. Mrs. Cauble moved to adopt the findings of the Professional Practices Commission and its recommendations that Lucas Catloth and Brett Gehrer receive no formal discipline as a result of their conduct and Todd Clark’s and Tahra Arnold’s applications for licensure be approved. Mrs. Busch seconded. Motion carried 9-1 with Mr. Willard in opposition.

Ms. Sieck presented a second set of cases from hearings on June 1. Mr. Porter moved to adopt the findings and recommendations of the PPC and revoke the licenses of Matthew DeMoss and Katie Rufener, and suspend the license of Christian McKim until June 30, 2017. Mrs. Busch seconded. Motion carried 10-0.
INFORMATION ON SUMMER FOOD SERVICE PROGRAMS
KSDE’s division of Child Nutrition and Wellness oversees summer food service programs in Kansas, which are federally funded and serve low-income areas. CNW Assistant Director Kelly Chanay provided information about the meal service sites, sponsoring organizations such as school districts or churches, and other community partners. Many of the programs also include a learning component with mealtime. Kathy Koehn, nutrition and wellness coordinator with USD 257 Iola, was present to talk about the summer food programs operated in this district. One project was to convert a former school bus into a mobile diner and reading vehicle. She described several other activities used to bring summer meals to children in their community.

Board members took a break at 2:42 p.m.

LEGISLATIVE MATTERS: ACTION ON FY 2018 AND FY 2019 BUDGET OPTIONS
Deputy Commissioner Dale Dennis distributed a summary of enrolled bills passed into law during the 2016 Legislative session and referenced changes to the rules for working after retirement. He also described the steps that a newly formed review committee will take to consider school districts’ Extraordinary Need State Aid applications, which are to be submitted by July 15. Hearings on those applications will take place Aug. 2 and 3. A special Board meeting will be conducted via conference call at 2 p.m. Aug. 4 to take action on the applications.

Mr. Dennis led the Board through the annual practice of making education funding recommendations as required by statute. He provided a history of educational funding, category amounts based on law, and options to consider for the next two-year budget (Fiscal Year 2018 and Fiscal Year 2019). Mr. Dennis answered questions throughout the process.

The following discussions and/or actions occurred:
- Mrs. Busch moved to set Base State Aid Per Pupil at $4,650 for FY 2018 with a $500 increase to $5,150 in FY 2019. Mrs. Waugh seconded. Motion carried 7-3 with Mr. Roberts, Mr. Bacon and Mr. Willard in opposition. (Note: A subsequent vote on special education funding would change the BSAPP recommendation to $4,604 FY18 and $5,090 FY19)
- Mrs. Busch moved to fund Special Education at 85 percent of excess cost, but subtract the amount from the BSAPP amount originally approved. Mrs. Horst seconded. Motion carried 6-4 with Mr. Roberts, Mr. Bacon, Mr. Willard and Mrs. Cauble in opposition.
- Mrs. Horst moved to fully implement all-day kindergarten all at once for an additional cost of $90 million to be subtracted from the base. Mrs. Busch suggested amending the motion to implement all-day kindergarten over a two-year period with the additional cost subtracted from the base. Mrs. Horst accepted the amendment. Mrs. Busch seconded. Motion failed 2-8 with Mr. Roberts, Mr. Porter, Mrs. Waugh, Ms. Wims-Campbell, Mr. McNiece, Mrs. Cauble, Mr. Bacon and Mr. Willard in opposition. Mrs. Waugh moved to fund implementation of all-day kindergarten over a five-year period. Discussion continued and Mrs. Waugh withdrew the motion.
- Ms. Wims-Campbell moved to increase Parents as Teachers funding by 1,000 children for an additional cost of $460,000 and requested that Children’s Initiative Funds be utilized, not federal funds. Mr. Porter seconded. Motion carried 8-2 with Mr. Bacon and Mr. Willard in opposition.
- Ms. Wims-Campbell moved to fund 100 percent of the law for the Teacher Mentor Program for an additional cost of $3 million. Mr. Porter seconded. Motion carried 7-3 with Mr. Roberts, Mr. Bacon and Mr. Willard in opposition.
- Ms. Wims-Campbell moved to fund Professional Development at 25 percent of the law. Mrs. Cauble seconded. Motion failed to receive the necessary six votes for passage with a vote of 5-5. Mr. Roberts, Mr. Bacon, Mr. Willard, Mr. McNiece and Mrs. Horst were in opposition. Mrs. Waugh then moved to fund Professional Development at 50 percent of the law. Mr. Porter seconded. Motion carried 6-4 with Mr. Roberts, Mr. Bacon, Mr. Willard and Mrs. Horst in opposition.
- Mrs. Waugh moved to fund $35,000 each for Agriculture in the Classroom, Communities in Schools and Kansas Association of Conservation and Environmental Education. Mr. Bacon seconded. Motion carried 10-0.
- Mr. McNiece moved to fund the law for National Board Certification for an additional cost of $47,500. Ms. Wims-Campbell seconded. Motion carried 8-2 with Mr. Roberts and Mr. Bacon in opposition.
- Mrs. Waugh moved to fund the Pre-K Pilot program at the 2009-10 level for an additional cost of $900,000 and request that Children’s Initiative Funds be utilized. Mr. Roberts seconded. Motion carried 9-1 with Mr. Bacon in opposition.
- Mr. Willard moved to fund technical education transportation at original level for an additional cost of $800,000. Motion carried 9-1 with Mr. Bacon in opposition.
- Board members agreed to recommend that the state fund the law for Supplemental General State Aid (local option budget) and fund the law for Capital Outlay State Aid, but no formal vote was taken. There was no change in amounts for all-day kindergarten, transportation, school lunch and discretionary grants.

CONSENT AGENDA

Mrs. Horst moved to approve the Consent Agenda as presented. Ms. Wims-Campbell seconded. Motion carried 9-1 with Mr. Roberts in opposition. In the Consent Agenda, the Board:

- received the monthly Personnel Report for June.
- confirmed the unclassified special projects personnel appointment of Ashley Christiansen as Senior Administrative Assistant on the Teacher Licensure and Accreditation team effective July 3, 2016, at an annual salary of $28,308.80.
- approved local in-service education plans for USD 209 Moscow Public Schools and USD 211 Norton Community Schools.
- approved granting the renewal of Visiting Scholar licenses to Joseph Williams and USD 481 Rural Vista for music education; plus the following instructors with USD 229 Blue Valley Center for Advanced Professional Studies (CAPS) program — Janet Graham for global business courses; Robin Bacon for Foundations of Medicine courses; and Marjorie Holloway for Foundations of Medicine II. These licenses are valid for the 2016-17 school year.
- accepted recommendations of the Licensure Review Committee as follows: Approved Cases — 3071 Garrett Griffin (PreK-12 high incidence special education), 3075 Melissa Thorsell, 3082 Karen Francis (K-6 elementary education), 3086 Bevin Noack, 3090 Jace’ Karmon Thomas, 3095 Michael Padow, 3096 Kari Taylor, 3099 Derick Reid, 3100 Clorie Broadbent. Denied Cases — 3071 Garrett Griffin (middle level 5-8 English language arts).
- accepted recommendations of the Evaluation Review Committee for continuing accreditation of McPherson College and Southwestern College, both through Dec. 31, 2022.
- accepted the following recommendations of the Evaluation Review Committee for program approval: Associated Colleges of Central Kansas — High Incidence Special Education (A, K-6, 6-12, PreK-12) Master’s new program through Dec. 31, 2018; Baker University — Business (I, 6-12), Elementary (I, K-6), Health (I, PreK-12), History, Government and Social Studies (I, 6-12), Mathematics (I, 5-8), Mathematics (I, 6-12), Music (I, PreK-12), Instrumental Music (I, PreK-12), Vocal Music (I, PreK-12), Physical Education (I, PreK-12), Restricted (I, 5-8, 6-12, PreK-12) all continuing programs through Dec. 31, 2023; Fort Hays State University — Art (I, PreK-12), Business (I, 6-12), Early Childhood Unified (I, B-Gr3), Earth and Space Science (I, 6-12), Journalism (I, 6-12), Mathematics (I, 6-12), Music (I, PreK-12), Instrumental Music (I, PreK-12), Vocal Music (I, PreK-12) English for Speakers of Other Languages (A, PreK-12), Building Leadership (A, PreK-12), District Leadership (A, PreK-12), Reading Specialist (A, PreK-12), Restricted (I, 5-8, 6-12, PreK-12) all
Continuing programs through Dec. 31, 2024, and Mathematics (I, 5-8) dormant program; **Friends University** — High Incidence Special Education (A, PreK-12) new program through Dec. 31, 2018, and Art (I, PreK-12), Mathematics (I, 6-12), Physical Education (I, PreK-12), Speech/Theatre (I, PreK-12) all continuing programs through Dec. 31, 2023; **Ottawa University** — Restricted (I, 5-8, 6-12, PreK-12) new program through Dec. 31, 2018; **Wichita State University** — Physics (I, 6-12), Speech/Theatre (I, PreK-12), English for Speakers of Other Languages (A, PreK-12) all continuing programs through Dec. 31, 2024.

- awarded supplemental funding in the amount of $2,534 for Rosedale Development Association as a subgrantee of the 2016-17 Kansas AmeriCorps program for a total award of $63,380.
- authorized USD 230, Spring Hill, Johnson County, to hold an election on the question of issuing bonds in excess of the district’s general bond debt limitation.
- authorized USD 230, Spring Hill, Johnson County, to receive capital improvement (bond and interest) state aid as authorized by law.
- approved School Improvement Grant continuation awards, 1003(g), for FY 2016 as follows: USD 500 Kansas City Kansas, Douglass Elementary $760,000; USD 500 New Stanley Elementary $760,000; USD 501 Topeka, Quincy Elementary $1,094,290; USD 501 Ross Elementary $1,324,274; USD 501, Scott Elementary $1,411,286; USD 501, Shaner Elementary $1,440,295.
- defined Extraordinary Enrollment Growth under KSA 72-6441 (ancillary facilities) as a three-year average of at least six percent increase in enrollment, or an increase of 1,500 or more students over the past three years, or an increase of 750 or more students over three of the last six years if the new facilities being constructed are not replacement. **authorized the Commissioner of Education to negotiate and**
- continue a contract with North Central Kansas Technical College to provide services to manage, implement and lead the Microsoft Imagine Academy program for secondary schools in Kansas in an amount not to exceed $32,000 for 2016-17.

Board members took a 10-minute break at 5:05 p.m. Mrs. Busch left the meeting.

**REPORT ON NASBE MIDWEST REGIONAL CONFERENCE**

Board members Jim McNiece, Carolyn Wims-Campbell and Deena Horst represented Kansas as they joined members of other state boards of education for a regional meeting June 24 and 25 at Little Rock Central High School in Little Rock, Arkansas. They each reported on highlights of the event, sponsored by the National Association of State Boards of Education (NASBE). Topics included implementation of ESSA, student-focused education and networking with other regional State Boards members.

**BOARD REPORTS AND REQUESTS FOR FUTURE AGENDA ITEMS**

Communications — Mrs. Cauble said the committee plans to contact the state’s colleges of education and offer for Board members to visit teacher preparation classes as in the past. Letters would be sent this fall. She asked for names of those available to speak to the college classes. Mrs. Cauble suggested that the Blue Ribbon Task Force present its report on teacher vacancies and supply to the House and Senate Education committees.

Policy Committee — Mrs. Waugh asked for input on whether Board members wanted to continue tracking travel expenses by categories following the year-long trial period. It was decided to return to the standard method of separating Board meetings and other activities, but not assigned or legislative.
Student Voice — Mr. McNiece announced that questions were provided to KSHSAA for its Student Council Workshop in July. However, the itinerary was already full and it wouldn’t work for Board members to be on the agenda. The student responses will be shared with the Board at a later time.

Board Attorney Mark Ferguson referenced his monthly summary and offered to answer questions.

During individual Board member reports, Mrs. Horst and Mr. Willard attended the NASBE nomination committee meeting in Washington D.C. Mrs. Horst also was at the Coalition of Innovative School Districts meeting. Mr. Porter reported on the NASBE conference call for members of the Government Affairs Committee and expressed interest of the Professional Standards Board he serves on to help with teacher vacancy issues and solutions. Mrs. Waugh attended an open house for the new Lansing superintendent and a ceremony marking the 150th year of the Kansas State School for the Blind. Ms. Wims-Campbell participated in her last KSHSAA meetings as a State Board representative on the Board of Directors and Executive Board. Mrs. Cauble reported on the Education Commission of the States National Forum and visits by the Commissioner in her district.

In his Chairman’s Report, Mr. McNiece noted that the Commissioner’s annual evaluation would take place in October to comply with Board policy and the state’s performance review schedule. He reminded members of the next day’s work session.

Requests for Future Agenda Items:
Mr. Roberts asked for discussion about labeling children by race. Mrs. Waugh requested a presentation from the Kansas Association of Conservation and Environmental Education organization.

BOARD MEMBER TRAVEL
Additions to the travel requests were: Mr. McNiece July 26 ESEA Advisory Council meeting and July 27 Summer Leadership Conference in Wichita. Mrs. Cauble moved to approve the travel requests and additions. Mrs. Horst seconded. Motion carried 9-0 with Mrs. Busch absent.

ADJOURNMENT
Chairman McNiece adjourned the meeting at 5:57 p.m. The next regular State Board meeting will be Aug. 9 and 10 in Topeka.
Several KSDE staff members addressed topics related to the session’s theme and vision outcome — high school graduation rates and postsecondary attendance/completion. Jessica Noble explained how graduation rates are determined and tracked, as well as the difference between non-graduates and dropouts. Scott Smith and Jay Scott led discussions about the changing job market, when K-12 might hand over the tracking of high school graduates who attend college or trade schools, markers for postsecondary attainment and data collection. At the conclusion of the work session, Mr. Roberts presented three draft policy proposals he created for not labeling children in school by race or ethnicity.

Information technology staff assisted Board members in the transition to KSDE email accounts for education-related correspondence.
In his monthly update to the Board, Commissioner Watson plans to comment on the start of a new school year as well as the work of cross-agency teams that are focusing on vision outcomes.
To: Kansas State Board of Education

Subject: Citizens' Open Forum

Board Goals: Develop active communication and partnerships with families, communities, business stakeholders, constituents and policy partners

During the Citizens’ Open Forum, the State Board of Education provides an opportunity for citizens to share views about topics of interest or issues currently being considered by the State Board.

Each speaker shall be allowed to speak for three minutes. Any person wishing to speak shall complete a presenter's card, giving his or her name and address, and the name of any group he or she is representing. (Ref. Board Policy 1012)

If written material is submitted, 13 copies should be provided.
To: Commissioner Randy Watson  
From: Jay Scott  
Subject: Annual Career and Technical Education program review  
Date: 8/23/2016  
Board Goals: Provide a flexible and efficient delivery system to meet our students’ varied and changing needs

Career and Technical Education (CTE) continues to grow and thrive in Kansas schools. During this annual update, KSDE’s CTE team will share with the State Board of Education more about CTE and how these programs help Kansas move towards the new vision. The State Board will hear from the chair of the Kansas Advisory Committee for CTE Lynette Yevak and from consultants who revised Career Clusters last year. Additionally, data from 2015-2016 will be shared along with a look at the year ahead, including updates on individual plans of study and job shadow programs.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Beth Fultz
Director: Scott Smith
Commissioner: Randy Watson
Meeting Date: 9/20/2016

Item Title:
Act on History, Government, Social Studies assessment performance levels and cut scores

Board Goals:
Provide a flexible and efficient delivery system to meet our students’ varied and changing needs

Recommended Motion:
It is moved that the Kansas State Board of Education vote to approve performance levels and cut scores to be applied to the Kansas College and Career Ready Assessments in History, Government, Social Studies.

Explanation of Situation Requiring Action:
In August of 2016, the Kansas State Board of Education received performance level and cut score information for the Kansas College and Career Ready Assessments in History, Government, Social Studies. Additional information will be provided at the September meeting. If approved, the cut scores will be applied to the 2016 assessments in grades 6, 8 and 11.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Colleen Riley
Director: Colleen Riley
Commissioner: Randy Watson
Meeting Date: 9/20/2016

Item Title:
Act to submit amended Emergency Safety Intervention regulations to the Department of Administration and the Office of the Attorney General for review

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education approve the submission of the amendments to the emergency safety intervention regulations, K.A.R. 91-42-1, 91-42-2, 91-42-4, and 91-42-7, to the Department of Administration and the Office of the Attorney General for review.

Explanation of Situation Requiring Action:
During its August meeting, the State Board of Education received a draft prepared by KSDE staff of amendments to K.A.R. 91-42-1, 91-42-2, 91-42-4, and 91-42-7, which included changes required by 2016 H Sub for SB 193. K.A.R. 91-42-2 includes language voted on by the State Board at its May 2016 meeting further clarifying that physical escort and time-out are not emergency safety interventions.

Staff will further explain the proposed regulations, if needed, and will answer questions posed by State Board members. A draft of the regulations has been provided.

KSDE staff proposes that the regulations, as amended, be submitted per the required adoption process. The Department of Administration and the Office of the Attorney General will review the proposed amendments. After those two offices complete their reviews, the State Board will set a public hearing date for comments on the proposed regulations.
91-42-1. Definitions. As used in this article, each of the following terms shall have the meaning specified in this regulation: (a) “Administrative review” means review by the state board upon request of a parent.

(b) “Chemical restraint” means the use of medication to control a student’s violent physical behavior or restrict a student’s freedom of movement.

(c) “Commissioner” means commissioner of education.

(d) “Complaint” means a written document that a parent files with a local board as provided for in this article.

(e) “Department” means the state department of education.

(f) “District” means a school district organized under the laws of this state that is maintaining a public school for a school term pursuant to K.S.A. 72-1106, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

(g) “Emergency safety intervention” means the use of seclusion or physical restraint.

(h) “Hearing officer” means the state board’s designee to conduct an administrative review as specified in K.A.R. 91-42-5. The hearing officer shall be an officer or employee of the department.

(i) “Incident” means each occurrence of the use of an emergency safety intervention.

(j) “Local board” means the board of education of a district or the governing body of any accredited nonpublic school.

(k) “Mechanical restraint” means any device or object used to limit a student’s movement.

(l) “Parent” means any of the following:

(1) A natural parent;

(2) an adoptive parent;
(3) a person acting as a parent, as defined in K.S.A. 72-1046 and amendments thereto;

(4) a legal guardian;

(5) an education advocate for a student with an exceptionality;

(6) a foster parent, unless the foster parent’s child is a student with an exceptionality; or

(7) a student who has reached the age of majority or is an emancipated minor.

(m) “Physical escort” means the temporary touching or holding the hand, wrist, arm, shoulder, or back of a student who is acting out for the purpose of inducing the student to walk to a safe location.

(n) “Physical restraint” means bodily force used to substantially limit a student’s movement, except that consensual, solicited, or unintentional contact and contact to provide comfort, assistance or instruction shall not be deemed to be physical restraint.

(o) “School” means any learning environment, including any nonprofit institutional day or residential school or accredited nonpublic school, that receives public funding or which is subject to the regulatory authority of the state board.

(p) “Seclusion” means placement of a student in a location where all the following conditions are met:

1. The student is placed in an enclosed area by school personnel.

2. The student is purposefully isolated from adults and peers.

3. The student is prevented from leaving, or the student reasonably believes that the student will be prevented from leaving, the enclosed area.

(q) “State board” means Kansas state board of education.

(r) “Time-out” means a behavioral intervention in which a student is temporarily removed from a learning activity without being secluded. (Authorized by and implementing Article 6,
Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended, June 10, 2016; amended P-_____.)
91-42-2. Standards for the use of emergency safety interventions. (a) An emergency safety intervention shall be used only when a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to effect such physical harm. Less restrictive alternatives to emergency safety interventions, including positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student’s behavior before the use of any emergency safety interventions. The use of an emergency safety interventions shall cease as soon as the immediate danger of physical harm ceases to exist. Violent action that is destructive of property may necessitate the use of an emergency safety intervention.

(b) Use of an emergency safety intervention for purposes of discipline or punishment or for the convenience of a school employee shall not meet the standard of immediate danger of physical harm.

(c)(1) A student shall not be subjected to seclusion an emergency safety intervention if the student is known to have a medical condition that could put the student in mental or physical danger as a result of seclusion the emergency safety intervention.

(2) The existence of the medical condition must be indicated in a written statement from the student’s licensed health care provider, a copy of which shall be provided to the school and placed in the student’s file. The written statement shall include an explanation of the student’s diagnosis, a list of any reasons why an emergency safety intervention would put the student in mental or physical danger and any suggested alternatives to the use of emergency safety interventions.
(3) Notwithstanding the provisions of this subsection, a student may be subjected to an emergency safety intervention, if not subjecting the student to an emergency safety intervention would result in significant physical harm to the student or others.

(d) When a student is placed in seclusion, a school employee shall be able to see and hear the student at all times.

(e) Each seclusion room equipped with a locking door shall be designed to ensure that the lock automatically disengages when the school employee viewing the student walks away from the seclusion room, or in cases of emergency, including fire or severe weather.

(f) Each seclusion room shall be a safe place with proportional and similar characteristics as other rooms where students frequent. Each room shall be free of any condition that could be a danger to the student and shall be well-ventilated and sufficiently lighted.

(g) The following types of restraint shall be prohibited:

(1) Prone, or face-down, physical restraint;

(2) supine, or face-up, physical restraint;

(3) any restraint that obstructs the airway of a student;

(4) any restraint that impacts a student’s primary mode of communication;

(5) chemical restraint, except as prescribed treatments for a student’s medical or psychiatric condition by a person appropriately licensed to issue these treatments; and

(6) the use of mechanical restraint, except those protective or stabilizing devices either ordered by a person appropriately licensed to issue the order for the device or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, and seatbelts and any other safety equipment when used to secure students during transportation.
(h) The following shall not be deemed an emergency safety intervention if its use does not otherwise meet the definition of an emergency safety intervention:

(1) Physical escort; and

(2) time-out. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended, June 10, 2016; amended P-______)
91-42-4. Parent notification; required meeting; filing a complaint. (a) When an emergency
safety intervention is used with a student, the school shall notify the parent the same day the
emergency safety intervention was used. If the parent cannot be notified, the school shall notify
the emergency contact person for the student. If the school is unable to contact the parent, the
school shall attempt to contact the parent using at least two methods of contact. The same-day
notification requirement of this subsection shall be deemed satisfied if the school attempts at
least two methods of contact. A parent may designate a preferred method of contact to receive
the same-day notification required by this subsection. A parent may agree, in writing, to receive
only one same-day notification from the school for multiple incidents occurring on the
same day.

(b) The school shall provide written documentation of the emergency safety intervention used to
the parent no later than the school day following the day on which the emergency safety
intervention was used. This documentation shall include:

(1) the date and time of the intervention;

(2) the type of intervention;

(3) the length of time the intervention was used;

(4) the school personnel who participated in or supervised the intervention;

(5) the events leading up to the incident;

(6) the student behaviors that necessitated the emergency safety intervention;

(7) the steps taken to transition the student back into the educational setting;

(8) space or an additional form for parents to provide feedback or comments to the school
regarding the incident:
(9) a statement that invites and strongly encourages parents to schedule a meeting to discuss the incident and how to prevent future use of emergency safety interventions; and

(10) email and phone information for the parent to contact the school to schedule the emergency safety intervention meeting.

Schools may group incidents together when documenting the items in paragraphs (b)(5) through (7) if the triggering issue necessitating the emergency safety interventions is the same.

(c) In addition to the documentation required by subsection (b), the school shall provide the parent additional information.

(1) After the first incident in which an emergency safety intervention is used with a student during the school year, the school shall provide the following information in printed to the parent form or, upon the parent’s written request, by email:

(A) A copy of the standards of when emergency safety interventions can be used;

(B) a flyer on the parent’s rights;

(C) information on the parent’s right to file a complaint through the local dispute resolution process and the complaint process of the state board of education; and

(D) information that will assist the parent in navigating the complaint process, including contact information for the parent training and information center and protection and advocacy system.

(2) After subsequent incidents in which an emergency safety intervention is used with a student during the school year, the school shall provide a full and direct web site address containing the information in paragraph (b)(c)(1).

(d) After each incident, a parent may request a meeting with the school to discuss and debrief the incident. A parent may request such meeting verbally, in writing or by electronic means. A school shall hold a meeting requested under this subsection within 10 school days of the parent’s
request. The focus of any meeting convened under this subsection shall be to discuss proactive ways to prevent the need for emergency safety interventions and to reduce incidents in the future.

(1) If there is a third incident involving the use of emergency safety interventions within a school year on a student who has an individualized education program or a section 504 plan, then the student’s individualized education program team or section 504 plan team shall meet within 10 days after the third incident to discuss the incident and consider the need to conduct a functional behavioral analysis, develop a behavior intervention plan, or amend either if already in existence, unless the individualized education program team or the section 504 plan team has agreed on a different process.

(2) For a student with a section 504 plan, such student’s section 504 plan team shall discuss and consider the need for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq., and amendments thereto.

(3) For a student who has an individualized education program and are placed in a private school by a parent, a meeting called under this subsection shall include the parent and the private school, who shall consider whether the parent should request an individualized education program team meeting. If the parent requests an individualized education program team meeting, the private school shall help facilitate such meeting.

(4) If there is a third incident involving the use of emergency safety interventions within a school year on a student who is not described in paragraph (d)(1), then a meeting between the student’s parent and school employees shall be conducted within 10 days after the third incident. For a student who does not have an individualized education program or section 504 plan, the parent and school shall discuss the incident and consider the appropriateness of a referral for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq. and
amendments thereto, the need for a functional behavioral analysis, or the need for a behavior intervention plan. Each meeting called pursuant to this subsection shall include the student’s parent, a school administrator for the school where the student attends, one of the student’s teachers, a school employee involved in the incident, and any other school employees designated by the school administrator as appropriate for the meeting.

(3)(5) The parent shall determine whether the student shall be invited to any meeting called pursuant to this subsection.

(4)(6) The time for calling a meeting pursuant to this subsection shall be extended beyond the 10-school-day limit if the parent of the student is unable to attend within that time period.

(5)(7) Nothing in this subsection shall be construed to prohibit the development and implementation of a functional behavioral analysis or a behavior intervention plan for any student if the student could benefit from such measures but has had fewer than three incidents involving emergency safety interventions within a school year.

(e) If a school is aware that a law enforcement officer or school resource officer has used seclusion, physical restraint or mechanical restraint on a student, the school shall notify the parent the same day using the parent’s preferred method of contact. A school shall not be required to provide written documentation to a parent, as set forth in subsection (b) regarding law enforcement use of an emergency safety intervention, or report to the department law enforcement use of an emergency safety intervention. For purposes of this subsection, mechanical restraint includes, but is not limited to, the use of handcuffs.

(e)(f) If a parent believes that emergency safety interventions have been used in violation of this article or policies of the school district, then within 30 days from being informed of the use of emergency safety intervention, the parent may file a complaint through the local dispute
resolution process. Any parent may request an administrative review by the state board within 30
days from the date the final decision was issued pursuant to the local dispute resolution process.

(Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective,
T-91-2-17-16, Feb. 17, 2016; effective, June 10, 2016; amended P-_______.)
91-42-7. Reporting. (a) Each district shall report information from all incidents of emergency safety interventions that the department deems necessary to the department by the date and in the form specified by the department.

(b) The department shall compile reports from schools on the use of emergency safety interventions and provide the results based on aggregate data on the department web site and to the state board, the governor and the committees on education in the senate and the house of representatives by January 20, 2016, and annually thereafter. The department’s reported results shall include but shall not be limited to the following information:

(1) The number of incidents in which emergency safety interventions were used on students who have an individualized education program;

(2) the number of incidents in which emergency safety interventions were used on students who have a section 504 plan;

(3) the number of incidents in which emergency safety interventions were used on students who do not have an individualized education program or a section 504 plan;

(4) the total number of incidents in which emergency safety interventions were used on students;

(5) the total number of students with behavior intervention plans subjected to an emergency safety intervention;

(6) the number of students physically restrained;

(7) the number of students placed in seclusion;

(8) the maximum and median number of minutes a student was placed in seclusion;

(9) the maximum number of incidents in which emergency safety interventions were used on a student;
(10) the information reported under paragraphs (c)(1) through (c)(3) reported by school to the extent possible;

(11) the information reported under paragraphs (c)(1) through (c)(9) aggregated by age and ethnicity, gender and eligibility for free and reduced lunch of the students on a statewide basis; and

(12) any other information that the department deems necessary to report.

(c) Actual data values shall be used when providing statewide aggregate data for such reports.

(Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective, June 10, 2016; amended P-________.)
To: Commissioner Randy Watson  
Subject: Information on AdvancED accreditation protocol and standards  
Date: 8/23/2016  
Board Goals: Board Matters

AdvancED, formerly North Central Association (NCA), is a non-profit, non-partisan organization that conducts on-site External Reviews of Pre-K-12 schools and school systems. Vice President of Development Heather Kinsey, Regional Vice President Barbara Remondini, and Director of AdvancED Kansas/Oklahoma Dr. Nancy Bolz will provide information on the organization’s accreditation protocol and support structure. In 2017-18, AdvancED begins its fourth five-year cycle using the Systems Accreditation model.
To: Commissioner Randy Watson
From: Jeannette Nobo
Subject: Receive Kansas Curricular Standards for Library/Information and Technology
Date: 8/30/2016

Board Goals: Provide an effective educator in every classroom

The Division of Learning Services’ Career, Standards and Assessment Services team has as one of its responsibilities providing schools with curricular standards in a variety of content areas. Content standards are reviewed approximately every seven years. The review process is done with the support and assistance of educators from across the state representing all 10 State Board districts and all levels of education.

Field educators leading the review process for Library/Information and Technology will be presenting to the State Board the draft of the standards.
Education, including schools and school libraries, enables students to become productive citizens. To accomplish this goal, today’s children and youth must learn to persist in searching for appropriate information sources necessary to carry out the learning process.

Information and technology literacy skills are embedded in all content standards. These skills have become more complex as the definition of information literacy continues to change. Changes include multiple literacies in digital, visual, and textual skills that are crucial for this century learners. They are important for personal, academic, and career success.

- School libraries are spaces where children and youth can read, think, learn, create, explore and grow either individually or collaboratively.
- In school libraries, what is learned in content areas becomes reinforced and enhanced with informational literacy skills instructed by a school library media professional.
- School librarians are teachers with specialized knowledge and skills for co-teaching with content area teachers. They provide students innovative opportunities to develop intellectual curiosity and deep thinking skills.
- School librarians teach vital 21st century skills useful in academic, nonacademic and career activities.
- School librarians focus on information access and literacy. Informational literacy is defined as a set of abilities requiring individuals to recognize when information is needed and have the ability to locate, evaluate, and use effectively the needed information sources.
- School librarians use both primary and secondary sources in many modalities, including print, audio and visual resources. Potential resources can include social media sites, podcasts, news footage, articles, music, graphs, visuals, artifacts, personal interviews, and novels.
- School librarians collaborate with other educators to teach reading, writing, thinking, listening, and speaking.
- School librarians, and access to effective school library programs, positively impact student achievement through personalized, rigorous learning experiences, and equitable access to resources for all students.

These standards are designed to provide a framework for school librarians and other coteaching partners to design, implement, and evaluate inquiry based instruction. The instruction can include curriculum, assignments and/or projects that connect content, information, and technology skills toward student success in becoming independent lifelong learners.
Learners who are developing information literate abilities should use cognitive and technical skills, resources, and tools to:

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>1. Information Value</td>
<td>determine the value and purpose of information.</td>
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<tr>
<td>2. Information as Exploration</td>
<td>know the scope of the task required to meet an information need.</td>
</tr>
<tr>
<td>3. Information Research as Inquiry</td>
<td>pursue, study, and investigate problems for new understandings.</td>
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<tr>
<td>4. Information Authority</td>
<td>identify and evaluate information.</td>
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<tr>
<td>5. Information Format</td>
<td>recognize and distinguish uses and limits of products developed through various creative processes.</td>
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<tr>
<td>6. Information as Conversation</td>
<td>actively engage in non-academic, academic, and professional conversations.</td>
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1. **Information Value**: determine the value and purpose of information.

- Students recognize information as a product or service.
- Students understand information as a means for education, influence, or entertainment.
- Students use information as a means of discussing and understanding life-situations to make informed choices.

**PreK** By Kindergarten, with prompting and support, students will be able to:

- **P.1.1.** identify the front cover, back cover, and title page of a book.
- **P.1.2.** identify characters, settings, or illustrations to retell major events of the story.
- **P.1.3.** be aware of points-of-view (e.g., who is telling the story;
KANSAS CURRICULAR STANDARDS FOR LIBRARY/INFORMATION AND TECHNOLOGY

where does the story take place).

P.1.4. compare and contrast adventures and experiences of characters in familiar stories.

P.1.5. interact with different types of text.

P.1.6. identify sources of information (e.g., print, electronic, people).

K-2 By the end of second grade, students will be able to:

G2.1.1. recognize information appropriate to a task (e.g., fiction, nonfiction).

G2.1.2. explain and discuss various examples of fiction.

G2.1.3. distinguish the roles of author and illustrator.

G2.1.4. identify characteristics of folklore (e.g., fairy tale, folk tale, and tall tale).

G2.1.5. identify elements of a story or illustration (e.g., characters, problem, setting, main idea, and sequence of events).

G2.1.6. listen, view, and interact with media of various types and lengths to gain information for pleasure and personal growth.

G2.1.7. recognize facts, opinions, and points-of-view in various information sources.

G2.1.8. describe accurately and completely ideas of characters in a story.

G2.1.9. compare and contrast personal experiences to experiences of characters in stories.

G2.1.10. seek and evaluate information related to personal interest.

3-5 By the end of fifth grade, students will be able to:

G5.1.1. interact independently with digital media of various types and lengths to gain information.

G5.1.2. understand different types of resources can be used for different purposes (e.g., books, databases, periodicals, websites).

G5.1.3. explain differences in facts, opinions, and points-of-view.

G5.1.4. respond respectfully to the points-of-view of others, to the ideas of others, and acknowledge the contributions of others.

G5.1.5. explore a range of resources related to one’s information needs, personal interests, and well-being (e.g., nutrition, healthy play, hobbies).

G5.1.6. make connections among materials that are read, heard, and viewed.

G5.1.7. identify and respond to characteristics of realistic fiction, historical fiction, fantasy, science fiction, legends, fables,
and information text representing a variety of cultures and time periods.

G5.1.8. differentiate reading strategies among different types of text (i.e. informational, prose, narrative).

G5.1.9. analyze elements of a story including characters, setting, theme, and plot.

G5.1.10. communicate reaction to books read individually or in a small group.

6-8 By the end of eighth grade, students will be able to:

G8.1.1. determine how different points-of-view can influence the facts and opinions presented in controversial issues.

G8.1.2. encourage consideration of ideas and information from all group members.

G8.1.3. with guidance analyze and explain information presented in various formats; recognize the relationships of parts and the whole in visual and/or aural messages.

G8.1.4. read and evaluate the strengths and weakness of literature.

G8.1.5. recognize reading as a lifelong pursuit.

G8.1.6. identify characteristics of autobiography, drama, short stories, and mythology representing a variety of cultures and time periods.

G8.1.7. recognize characteristic styles of various authors and illustrators.

9-12 By the end of twelfth grade, students will independently be able to:

G12.1.1. assemble facts, opinions, and points-of-view and determine when appropriate in one’s own work (e.g., essay; report; presentation).

G12.1.2. recognize gaps in one’s own knowledge.

G12.1.3. understand and encourage the contributions of all group members in creating an information product.

G12.1.4. assess the value of various types of print and electronic information resources including databases, Internet sites, e-books, and government resources.

G12.1.5. access, retrieve, evaluate, and use information in real-life situations (e.g., job application; renting an apartment; selecting a physician).

G12.1.6. explore work of authors who write in different fictional genres and literary styles.

G12.1.7. understand complex forms of literary expression.

G12.1.8. read a variety of materials for educational and personal enjoyment.
G12.1.9. read and evaluate strengths and weaknesses of literature.
G12.1.10. read regularly for pleasure.

2. Information as Exploration: know the scope of the task required to meet an information need.

- Students identify and question information experts.
- Students explore information products for non-academic, academic, or career goals.
- Students, as independent learners, seek answers to their own questions.

PreK By Kindergarten, with prompting and support, students will be able to:
P.2.1. seek information related to personal interest.
P.2.2. answer questions based on information presented in a text.

K-2 By the end of second grade, students will be able to:
G2.2.1. locate the library media center.
G2.2.2. check out materials with assistance and return materials on time.
G2.2.3. understand the layout and basic organization of the library.
G2.2.4. exhibit proper respect for and care of library materials, facilities, and equipment.
G2.2.5. identify and use parts of a book to gather information (e.g., title page, glossary, index).
G2.2.6. explain fiction and nonfiction."".
G2.2.7. generally seek and evaluate information for personal interest.

3-5 By the end of fifth grade, students will be able to:
G5.2.1. check out materials and understand how to reserve (on hold) and share materials with others.
G5.2.2. identify and use subject headings, keywords, author, and title when using the catalog.
G5.2.3. understand subject classification and information location in libraries.
G5.2.4. expand identification and use of parts of a book, including the appendix, bibliography, glossary, copyright date, publisher, title page, table of contents, index, and preface.

6-8 By the end of eighth grade, students will be able to:
G8.2.1. explore a range of resources related to one’s information needs, personal interests, and well-being (e.g., nutrition,
activities, hobbies).

G8.2.2. use information resources efficiently so that resources are available for others to use.

G8.2.3. comprehensively use parts and functions of print and electronic information sources (i.e., index, table of contents, glossary, text features, etc.).

9-12 By the end of twelfth grade, students will independently be able to:

G12.2.1. access, retrieve, evaluate, and use information in real-life situations to recognize new knowledge and understanding.

G12.2.2. apply information problem-solving skills to personal life.

G12.2.3. judge the quality of one’s own information products and solutions.

G12.2.4. actively support and/or create strategies for ensuring equitable access to information resources.

G12.2.5. demonstrate motivation by seeking information to answer non-academic (e.g., community service; team compromise) and academic (e.g., related to education goals) questions and interests; trying a variety of formats and genres; and displaying willingness to go beyond academic requirements.

3. Information Research as Inquiry: pursue, study, and investigate problems for new understandings.

- Students develop and refine questions to investigate a problem.
- Students use appropriate computer technology tools to access, retrieve, evaluate, and use information to create new knowledge across academic disciplines.
- Students apply an inquiry process for individual or collaborative research.

PreK By Kindergarten, with prompting and support, students will be able to:

P.3.1. gather information from provided resources for a specific topic.

P.3.2. state a simple problem or need for information.

K-2 By the end of second grade, students will be able to:

G2.3.1. formulate broad questions with prompting.

G2.3.2. recognize the need for information.

G2.3.3. follow steps of a basic problem solving model in a group setting.

G2.3.4. demonstrate knowledge and skills to draw conclusions by
integrating prior knowledge with new information from materials viewed, read, or heard.

3-5 By the end of fifth grade, students will be able to:
G5.3.1. refine questions as information needs change.
G5.3.2. individually with minimal guidance, follow steps of a basic problem solving model.
G5.3.3. use background knowledge as context for new learning.
G5.3.4. determine the need for additional information.
G5.3.5. demonstrate the knowledge and skills to apply information by combining ideas on a given topic from more than one source and more than one format.

6-8 By the end of eighth grade, students will be able to:
G8.3.1. develop essential questions that go beyond fact finding.
G8.3.2. review and extend skills in stating the problem or need for information.
G8.3.3. perform advanced search techniques and queries.
G8.3.4. seek diverse perspectives to resolve an information problem or question.
G8.3.5. independently demonstrate knowledge and skills to apply a problem solving model to critical issues encountered in various non-academic, and academic situations.
G8.3.6. demonstrate the knowledge and skills to analyze and synthesize information on given topics from multiple sources to create new meanings.
G8.3.7. read and use data as evidence to support claims.
G8.3.8. display emotional resilience by persisting in information searching despite challenges.

9-12 By the end of twelfth grade, students will independently be able to:
G12.3.1. review and extend skills in stating a problem or need for information.
G12.3.2. revise questions and inquiry as information needs change.
G12.3.3. demonstrate mastery of technology tools for accessing information and pursuing inquiry.
G12.3.4. evaluate outside information sources used to resolve an information problem or question (e.g., community college, university, government agency, interlibrary loan).
G12.3.5. follow a problem solving model when seeking knowledge in academic subjects and make real-world connections.
G12.3.6. recognize and use alternative systems for accessing and organizing information (e.g., government sources, databases, digital collections, and social media).
G12.3.7. assess for gaps or weaknesses in information gathered.
G12.3.8. read and use data as the basis for evidence; analyze and evaluate data; make valid and reliable claims.
G12.3.9. monitor own information-seeking processes for effectiveness and progress, and make necessary adjustments.
G12.3.10. display emotional resilience by persisting in information searching despite challenges.

4. Information Authority: identify and evaluate information.

- Students identify the expertise and credibility of the creators of an information resource.
- Students critically evaluate information resources based on information need and context for which information is used.

PreK By Kindergarten, with prompting and support, students will be able to:

P.4.1. identify the author and illustrator.
P.4.2. identify an appropriate resource for an information need from presented texts.

K-2 By the end of second grade, students will be able to:

G2.4.1. locate and select information appropriate to a problem or question (e.g., fiction, nonfiction).
G2.4.2. identify simple reference sources (e.g., encyclopedias, maps, bookmarked websites, and local experts).
G2.4.3. define and give examples of accurate information.

3-5 By the end of fifth grade, students will be able to:

G5.4.1. seek and select the most appropriate reference sources of information (e.g., books, databases, websites).
G5.4.2. evaluate resources for currency, credibility, and authority.
G5.4.3. identify and use parts of a book to gain information (i.e., copyright, publisher, table of contents, index, and glossary).
G5.4.4. compare and contrast three information sources to verify accuracy and relevance.

6-8 By the end of eighth grade, students will be able to:

G8.4.1. independently use information from a variety of sources for academic subjects and personal knowledge.
G8.4.2. evaluate resources for points-of-view, bias, value or intent of information.
G8.4.3. identify inaccurate and misleading information.
G8.4.4. compare and contrast multiple sources and formats to verify information accuracy and relevance.
G8.4.5. understand the difference between primary and secondary sources.
G8.4.6. give credit to original ideas of others through proper attribution.

9-12 By the end of twelfth grade, students will independently be able to:
G12.4.1. evaluate and select information based on quality, credibility, accuracy, appropriateness for needs, and social and cultural perspective.
G12.4.2. understand the difference between relevant and irrelevant information.
G12.4.3. realize that conflicting facts, inconsistencies, and/or false claims are found in a multitude of sources.
G12.4.4. recognize and understand own personal biases and cultural context in relation to finding, gathering, and processing information.
G12.4.5. use digital tools to collect, analyze, and represent data in order to find patterns and organize the data into reliable and valid conclusions.
G12.4.6. select primary and secondary sources as appropriate.
G12.4.7. demonstrate the knowledge and skills to analyze, synthesize, and evaluate information on complex topics from multiple sources and multiple formats to create new meanings.
G12.4.8. understand the social nature of information and how information changes over time.
G12.4.9. give credit to original ideas of others through proper attribution and citation.
G12.4.10. differentiate various types of authority (e.g., academic expertise; social or political office or title; or special experience such as participation in a historical event).

5. Information Format: recognize and distinguish uses and limits of products developed through various creative processes.

- Students use appropriate technology tools and other resources to organize information.
- Students assess the fit between an information product and a particular information need.
• Students apply digital citizenship guidelines for educational, social, and recreational purposes.

**PreK**  By Kindergarten, with prompting and support, students will be able to:

P.5.1. ask and answer questions about key details in a text.
P.5.2. use various formats to gain new information.

**K-2**  By the end of second grade, students will be able to:

G2.5.1. understand and demonstrate knowledge of the steps of a basic research model.
G2.5.2. use and evaluate multiple formats to gain and present new information.
G2.5.3. with guidance, take notes to gather relevant information from a variety of sources.
G2.5.4. demonstrate in a group setting the knowledge and basic skills to organize information.
G2.5.5. create and share information that contribute to the success of the group (e.g., share appropriate text; share appropriate pictures).
G2.5.6. illustrate, communicate, and publish ideas and original stories using digital tools and media resources.
G2.5.7. interpret a complex visual and/or aural message in a different format (e.g., write a poem about a picture; illustrate song lyrics).
G2.5.8. understand and use Internet safety rules.

**3-5**  By the end of fifth grade, students will be able to:

G5.5.1. take notes to utilize relevant information from a variety of sources.
G5.5.2. implement a research model to find and synthesize information.
G5.5.3. use online tools and organize information in a visual way that is appropriate for the assignment or project (e.g., graphic organizers, story maps).
G5.5.4. with guidance, consider the purpose and audience for presenting information.
G5.5.5. choose the most appropriate format to express new understandings.
G5.5.6. understand Internet safety precautions (e.g., personal information, passwords, etc.).

**6-8**  By the end of eighth grade, students will be able to:

G8.5.1. demonstrate the knowledge and skills to find and organize information using a research model.
G8.5.2. utilize digital tools to plan strategies for managing and
designing projects or products.
G8.5.3. independently communicate information in the most
appropriate format for the message and audience.
G8.5.4. choose a variety of ways to demonstrate competency and
content knowledge using digital tools.
G8.5.5. seek, communicate actively, and integrate information
within a group to create a common product.
G8.5.6. apply prior and new information to planning, creation, and
evaluation of a particular information product.
G8.5.7. create a presentation using primary and secondary
sources.
G8.5.8. practice safe, legal, ethical, and responsible use of
websites and social media (e.g., passwords, personal
information, etc.).

9-12 By the end of twelfth grade, students will independently be able to:
G12.5.1. use appropriate information tools and other resources to
organize information in new ways that others can view,
use, and evaluate.
G12.5.2. utilize a variety of formats to communicate and
disseminate information and ideas and to evaluate the
effectiveness of own product.
G12.5.3. recognize that content is affected by format.
G12.5.4. understand an intended audience; demands of a
presentation format; and essential ideas being presented.
G12.5.5. create products that apply to authentic, real-world
contexts.
G12.5.6. use social networks and information tools to gather, share,
and publish work in venues that meet identified goals.
G12.5.7. judge the quality of one’s own information products and
solutions related to topics of personal interest.
G12.5.8. use information and computer technology ethically and
responsibly.
G12.5.9. actively foster a positive digital identity and reputation.

6. Information as Conversation: actively engage in
non-academic, academic, and professional conversations.

   ● Students read and contribute to conversations at an appropriate
     contextual level.
   ● Students correctly cite and refer to evidence from various print and digital
     sources to support conclusions.
● Students speak, write, and interact as participants in a changing society.

**PreK**  
By Kindergarten, with prompting and support, students will be able to:  
G12.6.1. actively engage in large and small group reading activity with purpose and understanding.  
G12.6.2. predict and share what will happen next in a story.

**K-2**  
By the end of second grade, students will be able to:  
G2.6.1. demonstrate knowledge and skills to draw conclusions by integrating prior knowledge with new information from materials viewed, read, or heard.  
G2.6.2. recognize the importance of accurately expressing information in the student’s own words.  
G2.6.3. describe other’s ideas accurately and completely.  
G2.6.4. understand the basic concept of intellectual freedom.  
G2.6.5. understand the concept of giving credit to the author of an information source with a simple bibliography (e.g., author and title).

**3-5**  
By the end of fifth grade, students will be able to:  
G5.6.1. discuss ideas with others in the group, listen well, and change ideas when appropriate.  
G5.6.2. respond respectfully to the points-of-view and ideas of others and acknowledge the contributions of each.  
G5.6.3. with assistance, summarize, and paraphrase information in own words.  
G5.6.4. give credit using a bibliography with basic citations.  
G5.6.5. define or give examples of plagiarism.  
G5.6.6. define or give examples of intellectual freedom.

**6-8**  
By the end of eighth grade, students will be able to:  
G8.6.1. use appropriate editorial style for referencing documentation.  
G8.6.2. analyze sources and/or products to determine the steps necessary to respect intellectual property rights.  
G8.6.3. independently summarize and paraphrase information in students’ own words avoiding plagiarism.  
G8.6.4. cite text and image sources properly to avoid plagiarism.  
G8.6.5. participate in discussion about First Amendment rights, responsibilities, and intellectual freedom.  
G8.6.6. encourage consideration of ideas and information from all group members.  
G8.6.7. recognize that there might be more than one published perspective on an issue.
By the end of twelfth grade, students will independently be able to:

G12.6.1. construct appropriate bibliographic citations including in-text citations for research papers.

G12.6.2. cite text and image sources properly to avoid plagiarism.

G12.6.3. participate and collaborate as members of a social or intellectual network of learners to reach goals and pursue lifelong learning.

G12.6.4. use speaking and writing skills to communicate and validate effectively new understandings.

G12.6.5. demonstrate leadership and confidence by presenting ideas to others in both formal and informal situations.

G12.6.6. build cultural understanding by collaborating locally and globally with learners from different regions and backgrounds.

G12.6.7. maintain openness to new ideas when evidence supports change.

G12.6.8. help groups move to consensus of information after substantive conversation and sharing by group members.

G12.6.9. identify and evaluate more than one published perspective on an issue.

References


Kansas Associations of School Boards (KASB, 2014). *The Rose Capacities Primer for Kansas Boards of Education*. KASB: Topeka, KS.  
Retrieved from [https://www.kasb.org/assets/Publications/Rose%20Capacities%20Primer_Fall%202014.pdf](https://www.kasb.org/assets/Publications/Rose%20Capacities%20Primer_Fall%202014.pdf)


To: Commissioner Randy Watson  
From: Dale Dennis  
Subject: Information on school bus rider tracking system developed by USD 415 Hiawatha  
Date: 8/18/2016  
Board Goals: Provide a flexible and efficient delivery system to meet our students’ varied and changing needs  

On Nov. 18, 2015, there was a school bus rollover accident in USD 415 Hiawatha which resulted in non-life-threatening injuries to the students and bus driver. Following the accident, school administrators in USD 415 developed a school bus rider tracking system to monitor students riding school buses at any point in time. This is a very unique system since it was developed by the school district for the benefit of their students and parents.

Dr. Penny Hargrove, Superintendent, and a technology staff member will demonstrate the school bus rider tracking system to the State Board of Education.
To: Commissioner Randy Watson
From: Denise Kahler
Subject: Update on Kansans CAN communication tools
Date: 8/29/2016

Board Goals: Develop active communication and partnerships with families, communities, business stakeholders, constituents and policy partners

Delivering consistent, fact-based messaging about the Kansans CAN vision is key to building support and keeping constituents informed. Communications Director Denise Kahler will review a communications toolkit her team prepared and distributed to school districts this fall. She will present the available resources and discuss how to utilize these tools.
To: Commissioner Randy Watson  
From: Brad Neuenswander  
Subject: Update on Transition to College Algebra Pilot Program  
Date: 8/26/2016  
Board Goals: Provide a flexible and efficient delivery system to meet our students’ varied and changing needs

KSDE staff will provide an update on the Transition to College Algebra pilot initiative. The goal of this project is to provide high school seniors one more opportunity to gain the math knowledge necessary to enter credit-bearing math classes at postsecondary institutions across the state. An update on the progress of the initiative as well as who the participants are will be provided.
To: Commissioner Randy Watson  
From: Gwen Kramer, Wendy Fritz  
Subject: Personnel Report  
Date: 8/25/2016  

Board Goals: Governmental Responsibility

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Total Employees 230* as of 8/13/2016. Count does not include Board Members.

*Excludes classified temporaries and agency reallocations, promotions, demotions, and transfers. Includes employees terminating to go to a different state agency (which are not included in annual turnover rate calculations).
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Agenda Number: 16 b.

Meeting Date: 9/20/2016

Staff Initiating: Director: Commissioner: 
Gwen Kramer Wendy Fritz Randy Watson

Item Title:
Act on appointments of persons to Unclassified Special Projects Positions

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education confirm the appointments of:

Branden Johnson to the position of Education Program Consultant on the Teacher Licensure and Accreditation team, effective Aug. 8, 2016, at an annual salary of $56,118.40. This position is funded by the State General fund and the Consolidated Administrative Pool.

Christa Chesmore to the position of Administrative Specialist on the Teacher Licensure and Accreditation team, effective Aug. 15, 2016, at an annual salary of $29,744. This position is funded by the State General fund and Certification Fee fund.

Krista Catron to the position of Program Consultant on the Teacher Licensure and Accreditation team, effective Aug. 15, 2016, at an annual salary of $43,680. This position is funded by the State General fund and the Kansas Volunteer Commission.

Jamie Crispin to the position of Public Service Executive on the Teacher Licensure and Accreditation team, effective Aug. 16, 2016, at an annual salary of $53,414.40. This position is funded by the Office of Community Services (OCS) – Training & Technical Fund Opportunity grant.

Laurel Murdie to the position of Director on the Fiscal Auditing Team, effective Aug. 29, 2016, at an annual salary of $91,125. This position is funded by the State General fund.

Explanation of Situation Requiring Action:

**Branden Johnson** will manage all Kansas charter schools, virtual schools/programs and diploma completion programs. These must be monitored and approved. Graduation and dropout data must be collected and submitted on several federal reports. This position also serves to provide technical assistance to district and school staff as they work to graduate all students.

**Christa Chesmore** will serve as the Lead Assistant to the Director of Teacher Licensure and Accreditation.

**Krista Catron** will manage the partial requirements of the Edward M. Kennedy Serve America Act

(continued)
including AmeriCorps. This position manages the AmeriCorps federal grant program including planning, organizing, implementing and evaluating all program components; provides technical assistance and expertise; directs the technical operation and activities necessary to implement the program; and coordinates services with local, state and federal agencies, volunteer management professionals and service agencies.

**Jamie Crispin** will manage, develop and maintain a training strategy and timeline for the Kansas Volunteer Commission; and provide technical assistance to Kansas Volunteer Commission (KVC) staff and sub-grantees.

**Laurel Murdie** will manage and support the field and agency in the area of Auditing as the Director for the Fiscal Auditing Team.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Item Title:
Act on recommendations of the Licensure Review Committee

Board Goals:
Provide an effective educator in every classroom

Recommended Motion:
It is moved that the Kansas State Board of Education accept the recommendations of the Licensure Review Committee as presented.

Explanation of Situation Requiring Action:
Recommendations of the Licensure Review Committee need approval of the State Board of Education. Certificates/licenses will be issued to those applicants whose appeals are granted.
KANSAS STATE BOARD OF EDUCATION
LICENSURE REVIEW COMMITTEE
Board Recommendations
September 2016

Case 3088
Savannah Johnson requested initial Kansas licensure for middle level 5-8 social studies and PreK-12 high-incidence special education. Jan Wilson made a motion to recommend approval of an initial Kansas license for PreK-12 high-incidence special education based on achievement of certification in Texas through an alternative route and clarification of educational background and teaching experience. The motion was seconded by Amy DeLaRosa and the License Review Committee approved the motion unanimously. The appeal for middle level 5-8 social studies was dropped.

Case 3089
Douglas Mowder requested initial Kansas licensure for middle level 5-8 social studies. Dale Jean Probst made a motion to recommend approval of a provisional license for middle level 5-8 social studies with full licensure contingent upon completion of a college course in world history, Kansas history, and methods of teaching social studies through a Kansas college to meet middle level social studies standards identified by the Committee. The motion was seconded by Jan Wilson and the License Review Committee approved the motion unanimously.

Case 3091
Amanda Painter Ingham requested the addition of an endorsement for PreK-12 high-incidence and low-incidence special education to a valid Kansas license. Dale Jean Probst made a motion to recommend approval of the addition of an endorsement for PreK-12 high-incidence and low-incidence special education to a valid Kansas license based on achievement of certification in Oklahoma through an alternative route and clarification of education background and teaching experience. The motion was seconded by Jan Wilson and the Licensure Review Committee approved the motion unanimously.

Case 3092
Ashley Mowder requested initial Kansas licensure for middle level 5-8 social studies. Amy DeLaRosa made a motion to recommend approval of a provisional license for middle level 5-8 social studies with full licensure contingent upon completion of a college course in world history, Kansas history, American government, and economics to meet middle level social studies standards identified by the Committee. The motion was seconded by Jan Wilson and the Licensure Review Committee approved the motion unanimously.

Case 3093
Robin Campbell requested initial Kansas licensure for PreK-12 high-incidence special education. Dale Jean Probst made a motion to recommend denial of this license based on lack of knowledge and performance to meet professional education standards and high-incidence special education standards identified by the Committee. The motion was seconded by Jan Wilson and the Licensure Review Committee approved the motion unanimously. The applicant is no longer pursuing licensure.

Case 3094
Lornette Dallas requested initial Kansas licensure for K-6 elementary education. Dale Jean Probst made a motion to recommend approval of an initial Kansas license for K-6 elementary education based on achievement of certification in Florida through an alternative route and clarification of educational background and teaching experience. The motion was seconded by Amy DeLaRosa and the Licensure Review Committee approved the motion unanimously.
Case 3097
Crystal White requested initial Kansas licensure for PreK-12 high-incidence special education. Amy DeLaRosa made a motion to recommend approval of provisional license for PreK-12 high-incidence special education with full licensure contingent upon completion of a college course in diverse learners for special education, assessment in special education, and planning for instruction in special education through a Kansas college to meet high-incidence special education standards identified by the Committee. The motion was seconded by Dale Jean Probst and the Licensure Review Committee approved the motion unanimously.

Case 3098
Liana Spikes requested initial Kansas licensure for K-6 elementary education and PreK-12 high-incidence special education. Heidi Bolt made a motion to recommend denial of this license based on lack of knowledge and performance to meet elementary education standards and high-incidence special education standards identified by the Committee. The motion was seconded by Bruce Major and the Licensure Review Committee approved the motion unanimously. The applicant is no longer pursuing licensure.

Case 3101
Carissa McKuin requested initial Kansas licensure for K-6 elementary education. Jan Wilson made a motion to recommend approval of an initial Kansas license for K-6 elementary education based on achievement of certification in Texas through an alternative route and clarification of educational background and teaching experience. The motion was seconded by Amy DeLaRosa and the Licensure Review Committee approved the motion unanimously.

Case 3103
Benilda Coyle requested initial Kansas licensure for middle level 5-8 science, secondary 6-12 chemistry, and PreK-12 Spanish. Jan Wilson made a motion to recommend approval of a professional level Kansas license for middle level 5-8 science, secondary 6-12 chemistry, and PreK-12 Spanish; based on achievement of certification in North Carolina through an alternative route, educational background, and teaching experience. The motion was seconded by Amy DeLaRosa and the Licensure Review Committee approved the motion unanimously.

Case 3104
Silva Taylor requested initial Kansas licensure for middle level 5-8 English. Bruce Major made a motion to recommend approval of an initial Kansas license for middle level 5-8 English based on achievement of certification in Texas through an alternative route, educational background, and teaching experience. The motion was seconded by Amy DeLaRosa and the Licensure Review Committee approved the motion unanimously.

Case 3106
Eric Allenbach requested initial Kansas licensure for secondary 6-12 social studies. Dale Jean Probst made a motion to recommend approval of an initial Kansas license for secondary 6-12 social studies based on achievement of certification in Oklahoma through an alternative route, educational background, and teaching experience. The motion was seconded by Jan Wilson and the Licensure Review Committee approved the motion unanimously.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Susan Helbert
Director: Scott Myers
Commissioner: Randy Watson

Meeting Date: 9/20/2016

Item Title:
Act on recommendations for Licensure Waivers

Board Goals:
Provide an effective educator in every classroom

Recommended Motion:
It is moved that the Kansas State Board of Education accept the recommendations for licensure waivers.

Explanation of Situation Requiring Action:
SBR 91-31-42 allows any school district to request a waiver from one or more of their accreditation requirements imposed by the State Board. Requests by schools to waive school accreditation regulation SBR 91-31-34 (appropriate certification/licensure of staff) are reviewed by the staff of Teacher Licensure and Accreditation. The district(s) must submit an application verifying that the individual teacher for whom they are requesting the waiver is currently working toward achieving the appropriate endorsement on his/her certificate/license. A review of the waiver application is completed before the waiver is recommended for approval.

The attached requests have been reviewed by the Teacher Licensure and Accreditation staff and are being forwarded to the State Board of Education for action. If approved, school districts will be able to use the individuals in an area outside the endorsement on their license, and in the area for which they have submitted an approved plan of study. The waiver is valid for one school year.
<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>First Name</th>
<th>Last Name</th>
<th>Subject</th>
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<td>Piper-Kansas City</td>
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<td>Peterson</td>
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<tr>
<td>D0307</td>
<td>Ell-Saline</td>
<td>Michelle</td>
<td>McCarty</td>
<td>Art</td>
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<tr>
<td>D0353</td>
<td>Wellington</td>
<td>Traci</td>
<td>Ybarra</td>
<td>School Counselor</td>
<td>Approved*</td>
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<td>D0402</td>
<td>Augusta</td>
<td>Kristen</td>
<td>Martin</td>
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<td>D0457</td>
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<td>Drake</td>
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<td>D0619</td>
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<td>Jessica</td>
<td>Stahl</td>
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<td>Gibson</td>
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<td>Approved*</td>
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<tr>
<td>X0758</td>
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<td>Christi</td>
<td>Shetlar</td>
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<tr>
<td>Z0032</td>
<td>Lakemary Center Paola</td>
<td>Benjamin</td>
<td>Morrow</td>
<td>High Incidence Special Ed.</td>
<td>Approved*</td>
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</table>
Act on recommendation for Visiting Scholar License

Board Goals:
Provide an effective educator in every classroom

Recommended Motion:
It is moved that the Kansas State Board of Education accept the recommendation of Randy Watson, Commissioner of Education, regarding a Visiting Scholar license.

Explanation of Situation Requiring Action:
Stanton County Schools, USD 452 and Andi Christenson
The Stanton County school district requests that Andi Christenson be granted a Visiting Scholar license valid for the 2016-17 school year. Ms. Christenson will be assigned as a full-time junior high school science teacher. She will be teaching 7th and 8th grade general science, plus a course in Plant and Soil Science and an Earth/Space course.

Andi Christenson earned a bachelor of science in Family Studies and Human Services (communication sciences and disorders) from Kansas State University. She earned a Master of Science degree in Agronomy from Kansas State in 2015. Andi’s degree programs included coursework in multiple science disciplines such as chemistry, biology, environmental ecology, botany, nutrition, and agronomy.

Ms. Christenson has verified her employment as a research scientist with Diamond Ag Research, Inc. in Larned, Kansas, since earning her master’s degree. While at Diamond Ag Research, Andi was responsible for establishing and overseeing field research projects. The job required understanding and integrating a combination of disciplines within the sciences.

Andi Christenson’s educational background including her science coursework and advanced degree in Agronomy, and her experience as a research scientist will allow her to provide a unique educational experience to junior high science students in the Stanton County school district. She meets the criteria of experience and an advanced degree in the subject. I recommend that the request of a Visiting Scholar license valid for the 2016-17 school year for Andi Christenson be approved, based on meeting two of the established criteria.
Item Title:
Act on Education Flexibility Partnership (Ed-Flex) Waiver

Board Goals:
Provide a flexible and efficient delivery system to meet our students’ varied and changing needs

Recommended Motion:
It is moved that the Kansas State Board of Education approve the one year Education Flexibility Partnership (Ed-Flex) waiver request for USD 497 Lawrence to allow them to exceed the 15 percent Title I carryover limitation of once every three years.

Explanation of Situation Requiring Action:
Kansas has the authority under the Education Flexibility Partnership Act of 1999, as amended by the Elementary and Secondary Education Act (ESEA), to waive certain federal requirements. The district listed below is seeking an Ed-Flex waiver of Title I Part A Section 1127(b) of ESEA which prevents them from exceeding the 15 percent Title I carryover of funds limitation more than once every three years.

USD 497 Lawrence Public Schools is seeking a waiver in order to carryover more than 15 percent of the 2015-2016 Title I allocation into 2016-2017.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Joan Peterson  Director: Scott Smith  Commissioner: Randy Watson

Meeting Date: 9/20/2016

Item Title:
Act on calendar year 2016 License for Commercial Driver Training School

Board Goals:
Provide a flexible and efficient delivery system to meet our students’ varied and changing needs

Recommended Motion:
It is moved that the Kansas State Board of Education issue a calendar year 2016 license to the following commercial driving school: Legacy Driving School of Andover LLC, Andover, Kansas.

Explanation of Situation Requiring Action:
The Driver's Training School License Act (K.S.A. 8-273 et seq.) requires that any person, partnership, or corporation providing driving instruction to ten (10) or more persons per calendar year for the purpose of meeting requirements of licensed driving of motor vehicles in Kansas, must secure a license from the State Board of Education. If approved, the proposed commercial driver training schools will be able to provide driving instruction to each qualified enrollee.

The Driver's Training School License Act (K.S.A. 8-273 et seq.) was established in 1965. In the past 10 years the number of schools has increased dramatically. Each year the commercial schools must be audited by the Department of Education.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Scott Myers
Director: Scott Myers
Commissioner: Randy Watson

Meeting Date: 9/20/2016

Item Title:
Act to approve Kansas in-service education plans

Board Goals:
Provide an effective educator in every classroom

Recommended Motion:
It is moved that the Kansas State Board of Education act to approve the in-service education plan for USD 361 Anthony Harper.

Explanation of Situation Requiring Action:
In provisions of K.S.A. 72-9604, the State Board is charged with setting standards and criteria by which LEAs will establish and maintain an in-service education program for their licensed personnel. Additionally, the state education budget provides state funds, when available, to be used to reimburse portions of the LEAs' in-service activities. Finally, LEAs must have approved by the State Board of Education a five-year in-service plan that includes appropriate activities for which reimbursement is available.

Specifically, S.B.R. 91-1-216(a)(b) stipulates that LEAs must develop and implement an in-service plan that includes the following: 1) establishment of a professional development council; 2) an assessment of in-service needs; 3) identification of goals and objectives; 4) identification of activities; and 5) evaluative criteria.

Over the years, almost all of the guidelines and report formats for the Kansas In-service Program have been merged into the Quality Performance Accreditation system. As a result, school districts have focused their in-service resources on the targets established by their respective buildings as identified through the school improvement process.

In compliance with S.B.R. 91-1-216(c) and S.B.R. 91-1-217(b)(3), the above education agency has submitted its proposed five-year in-service education plan. State department staff members have reviewed the plan using the State Board of Education approved criteria, and recommend approval of the plan.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Item Title:
Request from USD 310, Fairfield, Reno County, to hold a bond election

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education issue an Order authorizing USD 310, Fairfield, Reno County, to hold an election on the question of issuing bonds in excess of the district's general bond debt limitation.

Explanation of Situation Requiring Action:
Under KSA 75-2315 et seq., a school district may request that the State Board of Education authorize the district to hold an election on the question of issuing bonds in an amount which would cause the district's bonded indebtedness to exceed the district's general bond debt limitation. USD 310, Fairfield, Reno County, has made such a request. If approved, the district could hold an election on the question of whether additional bonds be issued. If the voters approve such action, the district could issue the bonds.

USD 310 plans to use the bond proceeds to pay the costs to: construct, furnish and equip improvements, renovations and additions to the existing district school building including (1) updates and upgrades to the safety and security of the campus by securing and controlling all access and entrances of the building with new technology and main entrance vestibule; (2) an eight classroom addition to the elementary wing, with four pre-K and kindergarten classrooms, one of which would be constructed to serve as a storm shelter room, infrastructure improvements, including electrical upgrades throughout the district; (3) roof replacement on the existing elementary wing; (4) a kitchen and cafeteria expansion and renovation; and (5) a physical education classroom addition with a full size court, bleachers, weight room, and locker rooms and restrooms constructed to serve as storm shelter rooms.

Based upon the following criteria, staff recommends that this bond application be approved.

1. The vote to submit the bond application by the local board of education was unanimous.
2. The district is experiencing a growth in enrollment.
3. The community was involved in the process of the building proposal.
4. All required forms were properly filed with us, along with an appropriate notice for the election.
5. The district outlined the needs for the building project by responding to all questions required by the State Board of Education.
6. An outside consultant was utilized in determining the school district needs.
7. The age of the existing building(s) appears to justify a bond election.
8. The application indicates that the building(s) are in need of major repairs in order to provide the necessary student programs.
Summary of Appeal to State Board of Education to Allow Local Vote on Exceeding Debt Limit

Unified School District 310 -- Fairfield

1. Current equalized assessed tangible valuation * $41,204,408
2. Percentage of bond debt limit 14%
3. Amount of bond debt limit $5,768,617
4. State Aid Percentage 0%

* Includes assessed valuation of motor vehicle

5. Amount of bond indebtedness at present time $0 0.0
6. Amount of bond indebtedness requested $5,895,000 14.3
7. Total amount of bond indebtedness if request approved (Lines 5 + 6) $5,895,000 14.3
8. Estimated amount of bond indebtedness authorized without approval $5,768,617 14.0
9. Amount of bond indebtedness above bond debt limit requested $126,383 0.3

Percent of Equalized Assessed Valuation - Current Year

Forms Requested

(X) 5-210-118 General Information
(X) 5-210-106 Resolution
( ) 5-210-108 Publication Notice
(X) 5-210-110 Application
(X) 5-210-114 Equalized Assessed Valuation

(X) Schematic floor plan of the proposed facilities
(X) Map of the school district showing present facilities
(X) Small map of the school district showing the adjoining school districts
(X) Map of the school district showing proposed facilities

August 10, 2016
Craig Neuenswander
Date
Director, School Finance

August 10, 2016
Dale M. Dennis
Date
Deputy Commissioner
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Dale Dennis
Deputy Commissioner: Dale Dennis
Commissioner: Randy Watson

Meeting Date: 9/20/2016

Item Title:
Request from USD 320, Wamego, Pottawatomie County, to hold a bond election

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education issue an Order authorizing USD 320, Wamego, Pottawatomie County, to hold an election on the question of issuing bonds in excess of the district's general bond debt limitation.

Explanation of Situation Requiring Action:
Under KSA 75-2315 et seq., a school district may request that the State Board of Education authorize the district to hold an election on the question of issuing bonds in an amount which would cause the district's bonded indebtedness to exceed the district's general bond debt limitation. USD 320, Wamego, Pottawatomie County, has made such a request. If approved, the district could hold an election on the question of whether additional bonds be issued. If the voters approve such action, the district could issue the bonds.

USD 320 plans to use the bond proceeds to pay the costs to: (1) construct, furnish and equip a science wing addition, roof replacement and other improvements to Wamego Middle School; (2) a new district kitchen; (3) sports complex improvements including new locker rooms, public restrooms, ADA and parking lot improvements, lighting and artificial turf; (4) new weight room, locker rooms and bleachers at Wamego High School; (5) renovate and improve locker rooms, restrooms, parking lots and the family and consumer science area of Wamego High School; (6) acquire, install and equip a one-to-one computer initiative in the district; (7) install building security and door locking system improvements at district buildings; and (8) make parking, roof, plumbing and lighting improvements at district buildings.

Based upon the following criteria, staff recommends that this bond application be approved.

1. The vote to submit the bond application by the local board of education was unanimous.
2. The district is experiencing a growth in enrollment.
3. The community was involved in the process of the building proposal.
4. All required forms were properly filed with us, along with an appropriate notice for the election.
5. The district outlined the needs for the building project by responding to all questions required by the State Board of Education.
6. An outside consultant was utilized in determining the school district needs.
7. The age of the existing building(s) appears to justify a bond election.
8. The application indicates that the building(s) are in need of major repairs in order to provide the necessary student programs.
## Summary of Appeal to State Board of Education to Allow Local Vote on Exceeding Debt Limit

### Unified School District 320 -- Wamego

<table>
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<td>$94,915,952</td>
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<td>2. Percentage of bond debt limit</td>
<td>14%</td>
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<td>3. Amount of bond debt limit</td>
<td>$13,288,233</td>
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<td>4. State Aid Percentage</td>
<td>21%</td>
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* Includes assessed valuation of motor vehicle

### Percent of Equalized Assessed Valuation - Current Year

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<td>35.4</td>
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<td>9.</td>
<td>21.4</td>
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### Forms Requested

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<tr>
<th>Form No.</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>(X) 5-210-118 General Information</td>
<td>(X) Schematic floor plan of the proposed facilities</td>
</tr>
<tr>
<td>( ) 5-210-106 Resolution</td>
<td>(X) Map of the school district showing present facilities</td>
</tr>
<tr>
<td>(X) 5-210-108 Publication Notice</td>
<td>(X) Small map of the school district showing the adjoining school districts</td>
</tr>
<tr>
<td>(X) 5-210-110 Application</td>
<td></td>
</tr>
<tr>
<td>(X) 5-210-114 Equalized Assessed Valuation</td>
<td>(X) Map of the school district showing proposed facilities</td>
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### Date

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<th>Signatures</th>
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<td>Craig Neuenswander</td>
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<td></td>
<td>Director, School Finance</td>
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<tr>
<td>August 10, 2016</td>
<td>Dale M. Dennis</td>
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<td>Deputy Commissioner</td>
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</tbody>
</table>
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Dale Dennis
Deputy Commissioner: Dale Dennis
Commissioner: Randy Watson

Item Title:
Request from USD 500, Kansas City, Kansas, Wyandotte County, to hold a bond election

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education issue an Order authorizing USD 500, Kansas City, Kansas, Wyandotte County, to hold an election on the question of issuing bonds in excess of the district's general bond debt limitation.

Explanation of Situation Requiring Action:
Under KSA 75-2315 et seq., a school district may request that the State Board of Education authorize the district to hold an election on the question of issuing bonds in an amount which would cause the district's bonded indebtedness to exceed the district's general bond debt limitation. USD 500, Kansas City, Kansas, Wyandotte County, has made such a request. If approved, the district could hold an election on the question of whether additional bonds be issued. If the voters approve such action, the district could issue the bonds.

USD 500 plans to use the bond proceeds to pay the costs to: (1) purchase and improve sites; (2) demolish certain existing district facilities; and (3) acquire, construct, furnish, equip, repair, remodel and make additions to buildings used for school purposes.

Based upon the following criteria, staff recommends that this bond application be approved.
1. The vote to submit the bond application by the local board of education was unanimous.
2. The district is experiencing a growth in enrollment.
3. The community was involved in the process of the building proposal.
4. All required forms were properly filed with us, along with an appropriate notice for the election.
5. The district outlined the needs for the building project by responding to all questions required by the State Board of Education.
6. An outside consultant was utilized in determining the school district needs.
7. The age of the existing building(s) appears to justify a bond election.
8. The application indicates that the building(s) are in need of major repairs in order to provide the necessary student programs.
9. Several buildings are being consolidated under this proposal.
## Summary of Appeal to State Board of Education to Allow Local Vote on Exceeding Debt Limit

### Unified School District 500 - Kansas City, Kansas

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Current equalized assessed tangible valuation *</td>
<td>$765,276,182</td>
<td></td>
</tr>
<tr>
<td>2. Percentage of bond debt limit</td>
<td>14%</td>
<td></td>
</tr>
<tr>
<td>3. Amount of bond debt limit</td>
<td>$107,138,666</td>
<td></td>
</tr>
<tr>
<td>4. State Aid Percentage</td>
<td>43%</td>
<td></td>
</tr>
<tr>
<td>* Includes assessed valuation of motor vehicle</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Amount of bond indebtedness at present time</td>
<td>$57,825,000</td>
<td>7.5</td>
</tr>
<tr>
<td>6. Amount of bond indebtedness requested</td>
<td>$235,000,000</td>
<td>30.8</td>
</tr>
<tr>
<td>7. Total amount of bond indebtedness if request approved (Lines 5 + 6)</td>
<td>$292,825,000</td>
<td>38.3</td>
</tr>
<tr>
<td>8. Estimated amount of bond indebtedness authorized without approval</td>
<td>$107,138,666</td>
<td>14.0</td>
</tr>
<tr>
<td>9. Amount of bond indebtedness above bond debt limit requested</td>
<td>$185,686,334</td>
<td>24.3</td>
</tr>
</tbody>
</table>

### Forms Requested

- (X) 5-210-118 General Information
- ( ) 5-210-106 Resolution
- (X) 5-210-108 Publication Notice
- (X) 5-210-110 Application
- (X) 5-210-114 Equalized Assessed Valuation
- (X) Schematic floor plan of the proposed facilities
- (X) Map of the school district showing present facilities
- (X) Small map of the school district showing the adjoining school districts
- (X) Map of the school district showing proposed facilities

### Signed by:

**Craig Neuenswander**

Director, School Finance

**Dale M. Dennis**

Deputy Commissioner

**August 15, 2016**

**August 15, 2016**
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Agenda Number: 16 j. (1)

Staff Initiating: Dale Dennis
Deputy Commissioner: Dale Dennis
Commissioner: Randy Watson
Meeting Date: 9/20/2016

Item Title:
Request from USD 320, Wamego, Pottawatomie County, to receive Capital Improvement (Bond & Interest) State Aid

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education issue an Order authorizing USD 320, Wamego, Pottawatomie County, to receive capital improvement (bond & interest) state aid as authorized by law.

Explanation of Situation Requiring Action:
Under KSA 75-2315 et seq., a school district may request that the State Board of Education authorize the district to hold an election on the question of issuing bonds in an amount which would cause the district's bonded indebtedness to exceed the district's general bond debt limitation. USD 320, Wamego, Pottawatomie County, has made such a request. If approved, the district could hold an election on the question of whether additional bonds be issued. If the voters approve such action, the district could issue the bonds.

USD 320 plans to use the bond proceeds to pay the costs to: (1) construct, furnish and equip a science wing addition, roof replacement and other improvements to Wamego Middle School; (2) a new district kitchen; (3) sports complex improvements including new locker rooms, public restrooms, ADA and parking lot improvements, lighting and artificial turf; (4) new weight room, locker rooms and bleachers at Wamego High School; (5) renovate and improve locker rooms, restrooms, parking lots and the family and consumer science area of Wamego High School; (6) acquire, install and equip a one-to-one computer initiative in the district; (7) install building security and door locking system improvements at district buildings; and (8) make parking, roof, plumbing and lighting improvements at district buildings.

The application contains the following non-instructional-related items: locker rooms, turf, lighting, and bleachers.

Based upon the following criteria, staff recommends that this bond application be approved.
1. The vote to submit the bond application by the local board of education was unanimous.
2. The district is experiencing a growth in enrollment.
3. The community was involved in the process of the building proposal.
4. All required forms were properly filed with us, along with an appropriate notice for the election.
5. The district outlined the needs for the building project by responding to all questions required by the State Board of Education.

(continued)
6. An outside consultant was utilized in determining the school district needs.
7. The age of the existing building(s) appears to justify a bond election.
8. The application indicates that the building(s) are in need of major repairs in order to provide the necessary student programs.
Summary of Appeal to State Board of Education to Allow Local Vote on Exceeding Debt Limit

Unified School District 320 -- Wamego

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Percent</th>
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</thead>
<tbody>
<tr>
<td>1. Current equalized assessed tangible valuation *</td>
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<tr>
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<td>3. Amount of bond debt limit</td>
<td>$13,288,233</td>
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<td>4. State Aid Percentage</td>
<td>21%</td>
<td></td>
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<tr>
<td>* Includes assessed valuation of motor vehicle</td>
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<tr>
<td>5. Amount of bond indebtedness at present time</td>
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<td>6. Amount of bond indebtedness requested</td>
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<td>9. Amount of bond indebtedness above bond debt limit requested</td>
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<td>21.4</td>
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</table>

Percent of Equalized Assessed Valuation - Current Year

Forms Requested

- (X) 5-210-118 General Information
- ( ) 5-210-106 Resolution
- (X) 5-210-108 Publication Notice
- (X) 5-210-110 Application
- (X) 5-210-114 Equalized Assessed Valuation
- (X) Schematic floor plan of the proposed facilities
- (X) Map of the school district showing present facilities
- (X) Small map of the school district showing the adjoining school districts
- (X) Map of the school district showing proposed facilities

August 10, 2016          Craig Neuenswander
                         Director, School Finance

August 10, 2016          Dale M. Dennis
                         Deputy Commissioner
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Item Title:
Request from USD 500, Kansas City, Kansas, Wyandotte County, to receive Capital Improvement (Bond & Interest) State Aid

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education issue an Order authorizing USD 500, Kansas City, Kansas, Wyandotte County, to receive capital improvement (bond & interest) state aid as authorized by law.

Explanation of Situation Requiring Action:
Under 2016 Senate Bill 323, a school district may request that the State Board of Education authorize the district to receive capital improvement (bond & interest) state aid. USD 500, Kansas City, Kansas, Wyandotte County, has made such a request. If approved, the district would receive capital improvement (bond & interest) state aid as provided by law. If the request is not approved, the district will not receive any capital improvement state aid.

USD 500 plans to use the bond proceeds to pay the costs to: (1) purchase and improve sites; (2) demolish certain existing district facilities; and (3) acquire, construct, furnish, equip, repair, remodel and make additions to buildings used for school purposes.

The application contains the following non-instructional-related items: kitchen improvements allowance ($6,000,000) and playground allowance ($1,540,000).

Based upon the following criteria, staff recommends that this application for capital improvement (bond & interest) state aid be approved.

1. The vote to submit the application for state aid by the local board of education was unanimous.
2. The district is experiencing a growth in enrollment.
3. The community was involved in the process of the building proposal.
4. All required forms were properly filed with us, along with an appropriate notice for the election.
5. The district outlined the needs for the building project by responding to all questions required by the State Board of Education.
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# Summary of Appeal to State Board of Education to Allow Local Vote on Exceeding Debt Limit

**Unified School District 500 - Kansas City, Kansas**

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- (X) Small map of the school district showing the adjoining school districts
- (X) Map of the school district showing proposed facilities

August 15, 2016  Craig Neuenswander  
Date  Director, School Finance

August 15, 2016  Dale M. Dennis  
Date  Deputy Commissioner
Item Title:

Act on contract with the Kansas Association of Independent and Religious Schools

Board Goals:

Provide an effective educator in every classroom

Recommended Motion:

It is moved that the Kansas State Board of Education authorize the Commissioner of Education to enter into a contract with the Kansas Association of Independent and Religious Schools for the reimbursement of funds for professional development of non-public school teachers and leaders, in an amount not to exceed $26,000.

Explanation of Situation Requiring Action:

Under No Child Left Behind, Kansas retains 2.5 percent of Title II, Part A funds for state level activities described under Section 2113, including professional development of teachers and leaders. KSDE is required to support equitably the Kansas non-public schools by providing funds for professional development of non-public teachers and leaders. By approving this contract, KSDE will be allowed to reimburse the Kansas Association of Independent and Religious Schools, the largest private school organization in Kansas, for professional development activities provided to private school educators during the 2016-2017 school year.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Item Title:
Act to initiate contract bid process for implementing social/emotional supports into Kansas College and Career Competencies

Board Goals:
Provide a flexible and efficient delivery system to meet our students’ varied and changing needs

Recommended Motion:
It is moved that the Kansas State Board of Education authorize the Commissioner of Education to enter into a contract with a vendor to be selected through a competitive bid process to implement a statewide system of tiered social/emotional supports framework of College and Career Competencies for the period of October 2016 through June 2017 in an amount not to exceed $100,000 to be paid out of the federal Title II - Part A funds.

Explanation of Situation Requiring Action:
The Kansas State Department of Education will select a vendor through a competitive bid process to implement a statewide system of tiered social/emotional supports framework of College and Career Competencies.

The selected vendor will employ professional development and coaching activities that will increase expertise in the breadth and depth of interpersonal, intrapersonal and cognitive competencies. In addition, the selected vendor will

- collaborate with KSDE to disseminate information and integrate the Kansas College and Career Competency Framework into KSDE priorities and processes
- provide Implementation Training and Support to Interdisciplinary Middle and High School Teams
- provide training to Kansas College and Career Competency Trainers
- provide online professional development and resources to promote college and career competencies in Kansas.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Staff Initiating: Madeleine Burkindine
Superintendent: Madeleine Burkindine
Commissioner: Randy Watson
Meeting Date: 9/20/2016

Item Title:
Authorize KSSB contract renewal with Accessible Arts, Inc. for related services and KSSB facilities use

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education authorize the Superintendent of the Kansas State Schools for the Deaf and the Blind to renew a contract with Accessible Arts, Inc. for arts-related services for students attending KSSB in exchange for KSSB facility use and statewide outreach services in the Arts (drama, movement, dance, visual arts, music) for Kansas individuals with disabilities in an amount not to exceed $134,000.

Explanation of Situation Requiring Action:
The Kansas State School for the Blind desires to renew the contract for student services and for KSSB facility use. The approximate $134,000 for statewide outreach is state general fund money that flows through the KSSB budget for Accessible Arts, Inc.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Agenda Number: 16 n.
Meeting Date: 9/20/2016

Staff Initiating: Madeleine Burkindine
Superintendent: Madeleine Burkindine
Commissioner: Randy Watson

Item Title:
Authorize KSSB contract renewal with Baer Wilson & Company, LLC for Counseling/Evaluation Services for students at KSSB

Board Goals:
Governmental Responsibility

Recommended Motion:
It is moved that the Kansas State Board of Education authorize the Superintendent of the Kansas State Schools for the Deaf and the Blind to renew a contract with Baer Wilson & Company, LLC to provide counseling/evaluation services for students who attend KSSB in an amount not to exceed $50,000.

Explanation of Situation Requiring Action:
In order to provide counseling/evaluation services for students for the 2016-2017 school year, it is requested that the Kansas State Board of Education authorize the Superintendent of the Kansas State Schools for the Deaf and the Blind to renew a contract with Baer Wilson & Company, LLC in an amount not to exceed $50,000.

There is not a need for a full-time employee in this area. Contracting for these services allows for flexibility from year to year as the need for services changes.
REQUEST AND RECOMMENDATION FOR BOARD ACTION

Item Title:

Authorize KSSB contract renewal with Providence Medical Center for Occupational and Physical Therapies for Students at KSSB

Board Goals:

Governmental Responsibility

Recommended Motion:

It is moved that the Kansas State Board of Education authorize the Superintendent of the Kansas State Schools for the Deaf and the Blind to renew a contract with Providence Medical Center to provide occupational therapy and physical therapy services for students attending Kansas State School for the Blind in an amount not to exceed $50,000.

Explanation of Situation Requiring Action:

In order to provide services for the 2016-2017 school year, it is requested that the Kansas State Board of Education authorize the Superintendent of the Kansas State Schools for the Deaf and the Blind to renew a contract with Providence Medical Center for occupational therapy and physical therapy services for students attending Kansas State School for the Blind.

There is not a need for a full-time occupational therapist or physical therapist. Contracting for these services allows for flexibility from year to year as the need for services changes.
Item Title:

Authorize KSSB contract with Dr. Linda Lawrence for Low Vision Services and Teacher Training Clinics

Board Goals:

Governmental Responsibility

Recommended Motion:

It is moved that the Kansas State Board of Education authorize the Superintendent of the Kansas State Schools for the Deaf and the Blind to enter into a contract with Dr. Linda Lawrence for Low Vision Services and Teaching Training Clinics in an amount not to exceed $18,500.

Explanation of Situation Requiring Action:

In order to provide services for low vision children and training for teachers of the visually impaired (TVIs), Dr. Linda Lawrence will conduct Low Vision Clinics during which the TVIs in training can observe her specialized techniques in diagnosing eye diseases in children.

In the past two years, 152 students (per year) with low vision have been evaluated through the Kansas State School for the Blind and KanLovKids Low Vision Program. Of those 304 students, 65 percent were evaluated by Dr. Linda Lawrence. She is an ophthalmologist who examines children diagnosed with Cortical Visual Impairment (the leading cause of visual impairment in children in the United States), children with additional disabilities, and young children ages birth to three. The mentioned population of students continues to expand, thus increasing the number of referrals that Dr. Lawrence is asked to evaluate.
**WEDNESDAY, SEPTEMBER 21, 2016**
**MEETING AGENDA**

<table>
<thead>
<tr>
<th>Time</th>
<th>Item</th>
</tr>
</thead>
</table>
| 1:00 p.m. | Call to Order  
| 1:05 p.m. | Approval of Agenda  
| 1:20 p.m. | Act on recommendations of the Professional Practices Commission  
| 1:40 p.m. | Discuss 2017 Board Meeting Dates  
| 2:25 p.m. | Board Reports & Requests for Future Agenda Items  
| 2:35 p.m. | Act on Board Member Travel  

Next Meeting: October 18 and 19, 2016 in Topeka
Item Title:

Act on recommendations of the Professional Practices Commission (G. McGarry)

Board Goals:

Governmental Responsibility

Recommended Motion:

It is moved that the Kansas State Board of Education adopt the findings of the Professional Practices Commission and its recommendation that Gage McGarry's voluntary surrender of his teaching license not be accepted and that his license and all associated endorsements be revoked.

Explanation of Situation Requiring Action:

Gage McGarry, a licensed teacher since 2012, was charged in 2015 with criminal possession of marijuana and marijuana paraphernalia. He is currently on diversion for those charges as well as misdemeanor DUI. The Professional Practices Commission (PPC) listened to Mr. McGarry’s testimony and read various letters of support submitted on Mr. McGarry’s behalf. Mr. McGarry testified that although he was a long-time user of marijuana (from 1999 to his arrest in 2015), he had not smoked marijuana since his arrest. Mr. McGarry’s testimony led some members of the PPC to believe he may have left marijuana and paraphernalia in his car while it was parked on school grounds. The PPC ordered Mr. McGarry to submit to two hair follicle tests – the first within 7 days of the PPC hearing and the second within 30 days prior to the next PPC hearing. Mr. McGarry decided he’d rather voluntarily surrender his license than submit to hair follicle drug testing. Mr. McGarry’s voluntary surrender asks that there be no indication his license is revoked. The PPC discussed Mr. McGarry’s surrender. Based on the recentness and severity of his 2015 offense, his own testimony that led them to believe he may have had drugs on school grounds, and his refusal to cooperate with their request for drug testing, the PPC does not believe Mr. McGarry to be trustworthy. The PPC recommends that Gage McGarry’s voluntary surrender of his teaching license not be accepted and that his license and all associated endorsements be revoked.

http://mediastream.ksde.org/Media/Board/KSBOE Videos/McGarry hearing from March 29, 2016.mp4
http://mediastream.ksde.org/Media/Board/KSBOE Videos/McGarry Hearing from April 25, 2016.mp4
http://mediastream.ksde.org/Media/Board/KSBOE Videos/Exhibit 11, March 29, 2016, Hearing.mp4
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the License
of Gage McGarry

Case No. 15-PPC-52
OAH No. 16ED0012

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BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the License
of Gage McGarry

COMPLAINT

COMES NOW on this 2nd day of October, Dr. Scott Myers, Director of Teacher Licensure
and Accreditation, Kansas State Department of Education (KSDE), 900 SW Jackson St., Topeka,
Kansas 66612, and alleges the following:

1. Gage McGarry, 7113 Aminda Dr., Shawnee, Kansas 66086, currently holds a professional
teaching license and an initial school leadership license. He has been continuously licensed
in Kansas since 2012. Exhibit 1.

2. On June 27, 2015, Mr. McGarry was ticketed for DUI, Refusal of Preliminary Breath Test,
Possession of Drug Paraphernalia, and Possession of Controlled Substances in the City of
Merriam, Kansas. Exhibit 2.

3. On September 17, 2015, Mr. McGarry entered into a diversion agreement in the Municipal
Court of the City of Merriam, Kansas wherein he stipulated to the charges and the facts as
contained in the complaint, police reports, written, oral, or visual recorded witness
statements, and videos. He further stipulated he was the individual arrested and charged.
Exhibit 3.

4. Mr. McGarry will be on diversion for 12 months.

5. The State Board may suspend a license for misconduct or other just cause including entry
into a diversion agreement after having been charged with drug-related conduct.
K.A.R. 91-22-1a. Mr. McGarry’s actions, which resulted in his arrest and entry into a
criminal diversion agreement for drug possession, possession of paraphernalia, DUI, and
refusal of preliminary breath test, are grounds for the suspension of his license and all related
endorsements.

6. Pursuant to K.S.A. 72-8501, the Legislature has declared teaching and school administration
to be professions in Kansas with all the similar rights, responsibilities and privileges
accorded other legally recognized professions. An educator is in a position of public trust.

7. Mr. McGarry’s conduct is inconsistent with the commonly-held perceptions and expectations
of a member of the teaching profession. Such conduct violates the public trust and
confidence placed in members of the profession. Mr. McGarry’s conduct demonstrates a
lack of fitness to perform the duties and responsibilities of a member of the teaching and
school administration professions and is sufficient and just cause for suspending his license
and all associated endorsements.
8. It is requested that Mr. McGarry’s license and all associated endorsements be suspended.

NOTICE

Pursuant to K.A.R. 91-22-1a(h) and K.S.A. 77-512, notice is hereby given of this complaint and request for suspension of Mr. McGarry’s license.

RIGHT TO A HEARING

Licensee has a right to request a hearing on the above issues and request for suspension in accordance with the provisions of the Kansas Administrative Procedures Act. To obtain a hearing, a written request for a hearing must be filed with the Secretary of the Professional Practices Commission within fifteen [15] days of the date of service of this notice at the following address:

Theresa Coté
Secretary, Professional Practices Commission
Kansas State Department of Education
900 SW Jackson St.
Topeka, Kansas 66612-1182

Licensee has a right to file a written answer to this complaint. Licensee has twenty [20] days from the date of service of this notice. If no answer is filed within 20 days, Licensee will be deemed to have admitted the allegations contained in the complaint and acquiesced in the proposed action. An Initial Order will be entered recommending the denial for the reasons stated in the complaint and that notice of the denial will be provided to all education agencies in the State of Kansas and to the agency responsible for issuing educator licenses/certificates in all other states.

Any answer shall type written or legibly printed. The answer must be signed and contain a statement under oath or affirmation that the statements made in the answer are true. The answer must be notarized and filed with the Secretary of the Professional Practices Commission by certified mail, return receipt requested, or by personal delivery to the address listed above.

Dr. Scott Myers
Director, Teacher Education and Licensure
VERIFICATION

STATE OF KANSAS

COUNTY OF SHAWNEE

SS:

Scott Myers, of lawful age, being first duly sworn, on oath deposes and states: He is the Complainant in the above-captioned action; he has read the above and foregoing Complaint knows and understands the contents thereof, and the statements and allegations contained therein are true and correct, according to his knowledge, information, and belief.

Dr. Scott Myers
Director, Teacher Education and Licensure

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 22nd day of October, 2015.

Notary Public

KIM MICK
Notary Public - State of Kansas
My Appt. Expires 1/30/2018

My appointment expires:

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2015, a true and correct copy of the above and foregoing was filed with the Secretary for the Professional Practices Commission and one (1) copy was mailed by certified mail, return receipt requested, to:

Gage McGarry
7113 Aminda Dr.
Shawnee, Kansas 66086

Cheryl Martin
Teacher Education and Licensure
ELCS

Educator at a Glance

SSN: [Redacted]
Teacher ID: 7627892511
Full Name: Gage Robert McGarry
DOB: 04/02/1960
Address: 7113 Aminda Dr., Shawnee, KS 66227

Gender: Male

Status: LEGAL

KBI/FBI Status: Legal

Print Address Label
Print Folder Label

Education

<table>
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<td>SU 11</td>
<td>MA</td>
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<tr>
<td>13033</td>
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KANSAK UNIFORM COMPLAINT AND NOTICE TO APPEAR

STATE OF KANSAS
COUNTY OF JOHNSON

CITY OF MERRIAM

IN THE MUNICIPAL COURT OF MERRIAM, KANSAS
THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS:

on the 27 day of June 2015 at 10:15 PM

MCGRATH, GAGE, ROSENF

NAME (LAST, FIRST, MIDDLE)

STREET ADDRESS 7113 AMINA DRIVE

CITY SHAWNEE STATE KS ZIP 66227

DOB 09/22/1990 RACE W BEX M HT 5'6' WT 175.

EYES _______ Hair: ____ BLG: ____ PHONE _______ D L No: ______

STATE: KS

MONTH YEAR 6/29/10 ENDORSEMENTS: CLASS: C

COMMERCIAL VEH. YES CDL: YES

Did unlawfully at 8600 W SHAWNEE MISSION PKWY

Did unlawfully at

City of MERRIAM, KANSAS

TRAFFIC Operate a vehicle, to wit:

Year 2017 Make NISSAN Model VERSA Color RED Body Type 4D SEDAN

Veh. Lic. # 6496873 Veh. Lic. # Veh. Lic. #

St. KS Yr. 2015

STL # Report #

Accident # Has. Mat. # Con. Zone # School Zone #

Alleged Speed Legal Speed # Pace # Radar #

Lidar # Other #

1 Violation: (AK/FRST DUI OTHER COMP, EVIDENCE >= .08)

B014383.1 Ordinance/Article/Section 1726 5:30 COURT

2 Violation: REPULS OF PRELIMIN Breath Test

B014381.2 Ordinance/Article/Section 6:30 2 COURT

3 Violation: Drug Paraphernalia Possession

B014390.3 Ordinance/Article/Section MMC 44-241 COURT

4 Violation: POS OF CONTROLLED SUBSTANCES

B014383.4 Ordinance/Article/Section MMC 44-241 COURT

5 Violation: Ordinance/Article/Section

6 Violation: Ordinance/Article/Section

7 Violation: Ordinance/Article/Section

8 Violation: Ordinance/Article/Section

☑️ Check for No insurance, see back of ticket for instructions

Admin Fee $ 0.00

Total Due COURT

Officer's Signature: CHRISTOPHER MEYER

No. 6079

Appeall before The Municipal Court of Merriam, Kansas at 9001 W. 62ND ST.
on the 20 day of July 2015 at 11:00 AM.

Signature: Personel Service Made by Officer

EXHIBIT 2
IN THE MUNICIPAL COURT OF THE CITY OF MERRIAM, KANSAS

CITY OF MERRIAM, KANSAS,

v.

Gage McGarry

Defendant

Case No. E 014363

DUI/DRUG DIVERSION AGREEMENT

Now on this 17 day of Sept, 2015, the above-captioned matter comes for hearing on the parties' joint agreement of diversion of prosecution and continuance for approval by the Court. The plaintiff appears through Elizabeth A. Boldt, City Prosecutor. The defendant appears in person and through his/her attorney, Steve Schmalz. The parties inform the Court that on the 27 day of June, 2015, the defendant was charged with the offense of:

✓ PBT, Paraphernalia  ✓ DUI  ✓ Drug Violation  ___ Other

Defendant states that the following information is true and correct as of this date:

Gage Robert McGarry 816-___-___-___

Full Name  Telephone  D.L. Number

113 Amanda Dr, Shawnee KS 66227

Street address  City  State  Zip Code

M W 180

Sex  Race  DOB  Soc Sec #  BAC

DEFENDANT’S STIPULATIONS AND WAIVER OF RIGHTS

The defendant understands and acknowledges that he/she has certain rights under the law or constitution of the United States and the State of Kansas, including:

1. THE RIGHT TO AN ATTORNEY: The right to retain counsel or if without sufficient funds to employ a lawyer, have the Court appoint one at no cost to the defendant. Knowing all of the foregoing, the defendant freely and voluntarily waives all rights to have counsel of his/her own choosing and does not desire that the Court appoint counsel for him/her.

2. THE RIGHT TO A SPEEDY TRIAL: The defendant informs the Court that he/she hereby knowingly and voluntarily waives all rights to a speedy arraignment and speedy trial pursuant to the United States and Kansas Constitutions and Kansas Statutes.

EXHIBIT

3
THE RIGHT TO A TRIAL BY JURY: The right to a trial by a jury of six persons in the event he/she is found guilty of the above offense(s) and appeals his/her conviction to the Johnson County District Court. The defendant informs the Court that he/she knowingly and voluntarily waives all right to a trial by jury.

THE RIGHT TO CONFRONT EVIDENCE, PRESENT WITNESSES AND STIPULATION TO RECORD: The right to confront the witnesses who would testify against him/her at trial and the right to cross-examine these witnesses and present evidence in a full and complete evidentiary hearing. Knowing all of the foregoing, the defendant freely and voluntarily waives all rights to confront, cross-examine, and present witnesses. Defendant stipulates to the charges and facts as they are contained in the complaint, police reports, written, oral or visual recorded witness statements, videos and test results prepared in connection with the above-referenced case and stipulates to the evidentiary foundation thereof. Defendant stipulates that his/her arrest occurred within the city limits of Merriam, Kansas and that he/she is the individual arrested and charged herein.

THE RIGHT TO TRIAL UPON VIOLATION: The right to a hearing in Merriam Municipal Court on alleged violations of any of the terms or conditions of this agreement. Upon a finding that the defendant has violated this agreement he/she understands and agrees that this case will proceed to trial based solely on the stipulations contained herein. Further, any proceedings on appeal to the Johnson County District Court shall be conducted solely on such stipulations.

SERVICE OF PROCESS: Defendant stipulates that service of process shall be deemed sufficient if notices and pleadings are mailed via United States mail to the address set out above unless the defendant notifies the Court in writing of a new address.

I have read, understand, and voluntarily agree to the above stipulations and waiver of rights.

[Signature]

Defendant's Signature

II. CONDITIONS OF PRETRIAL DIVERSION

DEFENDANT UNDERSTANDS, ACKNOWLEDGES, AND AGREES TO ABIDE BY THE FOLLOWING TERMS AND CONDITIONS OF THE DIVERSION AGREEMENT:

A. EXPLANATION AND CONSEQUENCES OF DIVERSION

1. Defendant acknowledges that he/she is voluntarily participating in this program and that his/her participation is not part of a Judgment of the Merriam Municipal Court.

2. Either party may seek modification or termination of this agreement upon motion to the Court.

3. Defendant acknowledges and understands that prosecution of this matter shall be deferred during the diversionary period. The defendant acknowledges that if the records of the prosecutor reflect that he/she has successfully complied with all of the terms and conditions of this agreement; the charges diverted will be dismissed by the City. The defendant shall keep copies of all records submitted as proof of compliance.

4. The term of this Diversion Agreement shall extend for a period of twelve (12) months from the date of this Agreement. The Defendant also understands the City has ninety (90) days after the diversion term to act on any violations of this agreement that occurred prior to the end of the diversion.

5. Defendant understands that should he/she violate any of the conditions of this Agreement, the case will be reinstated on the trial docket for further prosecution.

6. Defendant understands that if the diversion program is terminated, and the Court enters a finding of guilty, the Court will comply with the mandatory sentencing requirements for jail terms and fines.
7. Defendant understands that this Diversion Agreement is not a conviction; however, it may be used to enhance the defendant's sentence if he/she is subsequently convicted of the same or a similar offense.

E. COMPLIANCE REQUIREMENTS

8. Defendant acknowledges that this Agreement and his education/treatment program (if required) shall be monitored by: Alcohol Safety Action Project

9. Defendant shall report to his/her Diversion Monitor at such times and in such manner as directed by their Diversion Monitor.

10. Defendant shall keep the Court informed of his/her address changes.

11. Defendant shall not violate the laws of the United States or of any State or City during the term of this Agreement.

12. Defendant shall notify the City Prosecutor, in writing, within 72 hours of any arrests or violations of the law during the diversion term, excluding only minor traffic offenses.

13. Defendant shall not use, consume, possess, or ingest any intoxicating liquor, alcohol, cereal malt beverage, drug, or any other mood altering substance during the term of this Agreement without a valid doctor's prescription, a copy of which must be provided to the City Prosecutor prior to any such use.

14. Defendant agrees to submit to a test of breath, blood, saliva, or urine at any time during the diversion term if requested to do so by his/her Diversion Monitor, Prosecutor, Judge, or any law enforcement officer. The defendant stipulates that the results of said test(s) may be admitted without evidentiary foundation in a termination hearing. The defendant agrees to pay the costs associated with such testing prior to the actual test. The defendant shall also make the results of any such test available to the City and shall personally deliver a copy to his/her Diversion Monitor within forty-eight (48) hours of the receipt of such test results.

15. Defendant's Education/Treatment Plan (to be completed at the Defendant's expense):

   a. Defendant shall complete the Level 1 alcohol/drug information school and provide written proof to the Court within sixty (60) days of the date of this Agreement.

   b. Defendant shall complete the Level 2 continuing education classes as scheduled by his/her Diversion Monitor. Said classes shall be completed, and the defendant shall provide written verification to the Court within sixty (60) days of the date of this Agreement.

   c. Defendant shall enter and complete an out-patient/in-patient alcohol treatment program at ___________. The defendant shall successfully complete the treatment program and provide written proof to the Court within one hundred eight (180) days of today's date. The defendant shall also complete aftercare as recommended by the treatment provider and provide written verification of the same within ten (10) days after completion of such program.

   d. Defendant shall attend the DUI victim panel and provide written verification to the Court within one hundred eighty (180) days of today's date.

   e. The defendant shall attend _______ Alcoholics Anonymous/ Narcotics Anonymous group meetings and provide written proof of compliance to the Court after said meetings are completed.

   f. ________________________________
16 Defendant understands that he/she shall pay a fee of $1420 to enter into the diversion program. Pursuant to statute, there will be an additional $400.00 fee assessed if KBI or Johnson County Crime Lab Services have been rendered. If the full balance not paid at the start of the diversion, the remaining balance is due with in ______ days, on ________________________ at ______ P.M.

17 Defendant shall clear all outstanding warrants within thirty (30) days. The defendant shall remain warrant free during this term of diversion.

18 OTHER:

N/A

C. DISCLOSURE

19 Defendant has not previously participated in a diversion of any DUI; or similar alcohol-related offense, or drug offense; not previously been convicted of or plead no contest to a violation of any such offense; nor had any such offense amended to a lesser charge.

20 Defendant has truthfully answered all questions during the alcohol evaluation and evaluation conference, and filled out this Diversion Agreement truthfully. The defendant acknowledges that he/she has fully disclosed all arrests, charges, and/or convictions occurring prior to this date and time.

I have read this diversion agreement and understand the conditions imposed upon me which one I agree to abide by and fully satisfy.

THEREFORE, pursuant to the above-stated agreement, I request a continuance in this matter throughout the diversion term.

APPROVED:

Prosecutor

9/17/11

DATE

Defendant

Attorney for Defendant
KSDE EXHIBITS

IN THE MATTER OF
THE LICENSE
OF GAGE MCGARRY
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the License
of Gage McGarry

Case No. 15-PPC-52
OAH No. 16ED0012

Exhibit List

1. KSDE ELCS record included with complaint
2. City of Merriam Complaint and Notice to Appear
3. September 17, 2015, Diversion Agreement
4. Affidavit of Custodian of Business Records
7. Drug and Alcohol Influence Report (Merriam Police)
8. Implied Consent Advisory and Notices
9. Notice of Suspension
11. Video of June 27, 2015, traffic stop and arrest (Merriam Police)
**ELCS**

**Educator at a Glance**
- SSN: [Redacted]
- Teacher ID: 7627892511
- Full Name: Gage Robert McGarry
- DOB: 08/16/96
- Address: 7113 Aminda Dr., Shawnee, KS 66227

**Record History**
- Status: **Legal**
- KBI/BI Status: Legal

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<td>cmartin</td>
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<td>bhamer</td>
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</table>
KANSAS UNIFORM COMPLAINT AND NOTICE TO APPEAR
02/27/2015

STATE OF KANSAS
COUNTY OF JOHNSON

IN THE MUNICIPAL COURT OF MERRIAM, KANSAS
THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS:

on the 27 day of June 2015, at 10:18 AM

MCGRORY, GAGE, ROSENT

NAME (LAST, FIRST, MIDDLE)

STREET ADDRESS 7113 AMANDA DRIVE

CITY SHAVEREE STATE KS ZIP 66227

DOB 08/06/1980 RACE W SEX M HT 5'9" WT 175

EYES DRVR PHONE

D.L. No. 09494002 STATE: KS

MONTH/YEAR 6/29/20 ENDORSEMENTS: CLASS: C

COMMERCIAL VEH. ☑ YES CDL ☑ NO

Did unlawfully at 8600 W SHAVEREE MISSION PKWY

CITY OF MERRIAM, KANSAS

TRAFFIC Operate a vehicle, to wit:

Year Make Model Color Body Type

2007 NISSAN VERSA RED 4D SEDAN


6499TH St. KS 2015

[ ] Accident [ ] Bus. Mat. [ ] Con. Zone [ ] School Zone

Alleged Speed Legal Speed [ ] Peace [ ] Radar

[ ] Officer [ ] Lider [ ] Other

1 Violation: (A) FIRST DU DU OTHER CMP. EVIDENCE >= .08

E014383.1 Ordinance/Article/Section 1726 6:30 COURT

2 Violation: REFUSAL OF PRELIMINARY BREATH TEST

E014383.2 Ordinance/Article/Section 8-30-3 COURT

3 Violation: Drug Paraphernalia: Possession

E014393.3 Ordinance/Article/Section MMC 44-241 COURT

4 Violation: POSS OF CONTROLLED SUBSTANCES

E014383.4 Ordinance/Article/Section MMC 44-241 COURT

5 Violation:

Ordinance/Article/Section

6 Violation:

Ordinance/Article/Section

7 Violation:

Ordinance/Article/Section

8 Violation:

Ordinance/Article/Section

☑ Check for No Insurance, see back of ticket for instructions

Admin Fee $ 0.00

Total Due COURT

Officer's Signature: CHRISTOPHER MEYERS No. 5671

Appears before The Municipal Court of Merriam, Kansas at 9001 W. 62ND ST.
on the 20 day of July 2015 at 11:00 AM.

Signature: Personal Service Made by Officer
IN THE MUNICIPAL COURT OF THE CITY OF
MERRIAM, KANSAS

CITY OF MERRIAM, KANSAS,

v. 

Gage McGarry

Case No. E 014363

Defendant

DUI/DRUG DIVERSION AGREEMENT

Now on this 17th day of September, 2015, the above-captioned matter comes for hearing on the
parties' joint agreement of diversion of prosecution and continuance for approval by the Court. The plaintiff
appears through Elizabeth A. Boldt, City Prosecutor. The defendant appears in person and through his/her
attorney, Steve Schrier. The parties inform the Court that on the 27th day of June, 2015, the defendant was charged with the offense of:

✓ DUI
✓ Drug Violation
__ Other

Defendant states that the following information is true and correct as of this date:

Gage Robert McGarry
816
Full Name

7113 Amanda Dr
City

Shawnee KS 66227
State

Street address

Zip Code

M
Sex

W
Race

160
DOB

BAC

1. DEFENDANT'S STIPULATIONS AND WAIVER OF RIGHTS

The defendant understands and acknowledges that he/she has certain rights under the law or
constitution of the United States and the State of Kansas, including:

A. THE RIGHT TO AN ATTORNEY: The right to retain counsel or if without sufficient funds to employ a
lawyer, have the Court appoint one at no cost to the defendant. Knowing all of the foregoing, the defendant
freely and voluntarily waives all rights to have counsel of his/her own choosing and does not desire that the
Court appoint counsel for him/her.

B. THE RIGHT TO A SPEEDY TRIAL: The defendant informs the Court that he/she hereby knowingly and
voluntarily waives all rights to a speedy arraignment and speedy trial pursuant to the United States and Kansas
Constitutions and Kansas Statutes.
THE RIGHT TO A TRIAL BY JURY: The right to a trial by a jury of six persons in the event he/she is found guilty of the above offense(s) and appeals his/her conviction to the Johnson County District Court. The defendant informs the Court that he/she knowingly and voluntarily waives all right to a trial by jury.

THE RIGHT TO CONFRONT EVIDENCE, PRESENT WITNESSES AND STIPULATION TO RECORD: The right to confront the witnesses who would testify against him/her at trial and the right to cross-examine these witnesses and present evidence in a full and complete evidentiary hearing. Knowing all of the foregoing, the defendant freely and voluntarily waives all rights to confront, cross-examine, and present witnesses. Defendant stipulates to the charges and facts as they are contained in the complaint, police reports, written, oral or visual recorded witness statements, videos and test results prepared in connection with the above-referenced case and stipulates to the evidentiary foundation thereof. Defendant stipulates that his/her arrest occurred within the city limits of Merriam, Kansas and that he/she is the individual arrested and charged herein.

THE RIGHT TO TRIAL UPON VIOLATION: The right to a hearing in Merriam Municipal Court on alleged violations of any of the terms or conditions of this agreement. Upon a finding that the defendant has violated this agreement he/she understands and agrees that this case will proceed to trial based solely on the stipulations contained herein. Further, any proceedings on appeal to the Johnson County District Court shall be conducted solely on such stipulations.

SERVICE OF PROCESS: Defendant stipulates that service of process shall be deemed sufficient if notices and pleadings are mailed via United States mail to the address set out above unless the defendant notifies the Court in writing of a new address.

I have read, understand, and voluntarily agree to the above stipulations and waiver of rights.

[Defendant's Signature]

II. CONDITIONS OF PRETRIAL DIVERSION

DEFendant UNDERSTANDS, ACKNOWLEDGES, AND AGREES TO ABIDE BY THE FOLLOWING TERMS AND CONDITIONS OF THE DIVERSION AGREEMENT:

A. EXPLANATION AND CONSEQUENCES OF DIVERSION

1. Defendant acknowledges that he/she is voluntarily participating in this program and that his/her participation is not part of a Judgment of the Merriam Municipal Court.

2. Either party may seek modification or termination of this agreement upon motion to the Court.

3. Defendant acknowledges and understands that prosecution of this matter shall be deferred during the diversionary period. The defendant acknowledges that if the records of the prosecutor reflect that he/she has successfully complied with all of the terms and conditions of this agreement; the charges diverted will be dismissed by the City. The defendant shall keep copies of all records submitted as proof of compliance.

4. The term of this Diversion Agreement shall extend for a period of twelve (12) months from the date of this Agreement. The Defendant also understands the City has ninety (90) days after the diversion term to act on any violations of this agreement that occurred prior to the end of the diversion.

5. Defendant understands that should he/she violate any of the conditions of this Agreement, the case will be reinstated on the trial docket for further prosecution.

6. Defendant understands that if the diversion program is terminated, and the Court enters a finding of guilty, the Court will comply with the mandatory sentencing requirements for jail terms and fines.
7. Defendant understands that this Diversion Agreement is not a conviction; however, it may be used to enhance the defendant's sentence if he/she is subsequently convicted of the same or a similar offense.

E, COMPLIANCE REQUIREMENTS

8. Defendant acknowledges that this Agreement and his education/treatment program (if required) shall be monitored by: Alcohol Safety Action Project

9. Defendant shall report to his/her Diversion Monitor at such times and in such manner as directed by their Diversion Monitor.

10. Defendant shall keep the Court informed of his/her address changes.

11. Defendant shall not violate the laws of the United States or of any State or City during the term of this Agreement.

12. Defendant shall notify the City Prosecutor, in writing, within 72 hours of any arrests or violations of the law during the diversion term, excluding only minor traffic offenses.

13. Defendant shall not use, consume, possess, or ingest any intoxicating liquor, alcohol, cereal malt beverage, drug, or any other mood altering substance during the term of this Agreement without a valid doctor's prescription, a copy of which must be provided to the City Prosecutor prior to any such use.

14. Defendant agrees to submit to a test of breath, blood, saliva, or urine at any time during the diversion term if requested to do so by his/her Diversion Monitor, Prosecutor, Judge, or any law enforcement officer. The defendant stipulates that the results of said test(s) may be admitted without evidentiary foundation in a termination hearing. The defendant agrees to pay the costs associated with such testing prior to the actual test. The defendant shall also make the results of any such test available to the City and shall personally deliver a copy to his/her Diversion Monitor within forty-eight (48) hours of the receipt of such test results.

15. Defendant's Education/Treatment Plan (to be completed at the Defendant's expense):

   a. Defendant shall complete the Level 1 alcohol/drug information school and provide written proof to the Court within sixty (60) days of the date of this Agreement.

   b. Defendant shall complete the Level 2 continuing education classes as scheduled by his/her Diversion Monitor. Said classes shall be completed, and the defendant shall provide written verification to the Court within sixty (60) days of the date of this Agreement.

   c. Defendant shall enter and complete an out-patient/in-patient alcohol treatment program at __________________________. The defendant shall successfully complete the treatment program and provide written proof to the Court within one hundred eighty (180) days of today's date. The defendant shall also complete aftercare as recommended by the treatment provider and provide written verification of the same within ten (10) days after completion of such program.

   d. Defendant shall attend the DUI victim panel and provide written verification to the Court within one hundred eighty (180) days of today's date.

   e. The defendant shall attend _____ Alcoholics Anonymous/ Narcotics Anonymous group meetings and provide written proof of compliance to the Court after said meetings are completed.

   f. ___________________________________________
Defendant understands that he/she shall pay a fee of $1420 to enter into the diversion program. Pursuant to statute, there will be an additional $400.00 fee assessed if KBI or Johnson County Crime Lab Services have been rendered. If the full balance not paid at the start of the diversion, the remaining balance is due with in _______ days, on ______________________ at _______ P.M.

Defendant shall clear all outstanding warrants within thirty (30) days. The defendant shall remain warrant free during this term of diversion.

C. DISCLOSURE

Defendant has not previously participated in a diversion of any DUI; or similar alcohol-related offense, or drug offense; not previously been convicted of or plead no contest to a violation of any such offense; nor had any such offense amended to a lesser charge.

Defendant has truthfully answered all questions during the alcohol evaluation and evaluation conference, and filled out this Diversion Agreement truthfully. The defendant acknowledges that he/she has fully disclosed all arrests, charges, and/or convictions occurring prior to this date and time.

I have read this diversion agreement and understand the conditions imposed upon me which one I agree to abide by and fully satisfy.

THEREFORE, pursuant to the above-stated agreement, I request a continuance in this matter throughout the diversion term.

APPROVED:

[Signature]
Prosecutor

DATE
9/17/16

[Signature]
Defendant

[Signature]
Attorney for Defendant
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the License
of Gage McGarry

15-PPC-52
OAH No. 16 ED0012

AFFIDAVIT OF CUSTODIAN OF BUSINESS RECORDS

State of Kansas
County of Johnson

1. Stephen J. Gibson, being first duly sworn, on oath, depose and say that;

1. I am a duly authorized custodian of business records of the Merriam Police Department and
have the authority to certify those records;

2. The copy of the records attached to this affidavit is a true copy of the records described in the
subpoena; and

3. The records were prepared by the personnel or staff of the business, or persons acting under
their control, in the regular course of the business at or about the time of the act, condition or
event recorded.

\[Signature of Custodian\]

Subscribed and sworn to before the undersigned on Dec 30, 2015

[Signature of Notary Public]

Ronda Brumbaugh
Notary Public - State of Kansas
My Appointment Expires 5-16-18
CERTIFICATE OF MAILING

I certify that on __12-30-15__, 2015, a copy of the foregoing was delivered to:

Kelli M. Broers
Kansas State Department of Education
900 SW Jackson St., Suite 102
Topeka, Kansas, 66612.

(Signature of Custodian)
**INCIDENT / INVESTIGATION REPORT**

**Agency Name**
Merriam Police Department

**ORI**
KS0460300

**Date/Time Reported**
SU Jun 28, 2015 15:30

**OCA**
15-01715

---

**Location of Incident**
8600 Shawnee Mission Pkwy, Merriam, KS 66202

**Weapon / Tools**

<table>
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<tr>
<th># Victims</th>
<th>I</th>
<th>Type Society/ Public</th>
<th>Injury</th>
<th>None</th>
<th>Residency Status</th>
</tr>
</thead>
</table>

**VICTIM**

**City Of Merriam Ks**

**Home Address**
9001 W 62nd St, Merriam, KS 66202

**Employer Name/Address**

**Vehicle**

**Make** Make

**Model** Model

**Style** Style

**Color** Color

**License/Lis** Lic/Lis

**VIN** VIN

**CODES:** V = Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim) I = Other Involved

**PROPERTY**

**Status Codes**
L = Lost  S = Stolen  R = Recovered  D = Damaged  Z = Seized  B = Burned  C = Counterfeit / Forged  F = Found  U = Unknown

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<th>Victim #</th>
<th>UCR</th>
<th>Status - Date</th>
<th>Value</th>
<th>OJ</th>
<th>QTY</th>
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<th>Make/Model</th>
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**ID**

**Complainant Signature**

**Officer Signature**

**Case Status:**
Closed/cleared  June 28, 2015

**Case Disposition:**
Cleared By Arrest Adult  Jun 28, 2015
### Incident / Investigation Report

**Status Codes**
- L = Lost
- S = Stolen
- R = Recovered
- D = Damaged
- Z = Seized
- B = Burned
- C = Counterfeit / Forged
- F = Found
- U = Unknown

### DRUGS

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<th>Status</th>
<th>Quantity</th>
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<th>Suspected Drug Type</th>
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<td>0.10</td>
<td>Gram</td>
<td>Marijuana In Glass Container</td>
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</tbody>
</table>

### OFFENDER

#### Offender(s) Suspected of Using
- [ ] Drugs  [x] N/A
- [ ] Alcohol  [ ] Computer

#### Offender 1
- **SUI**
- **Age**: 35
- **Race**: W
- **Sex**: M

#### Offender 2
- **Age**: Race: Sex:

#### Offender 3
- **Age**: Race: Sex:

#### Primary Offender Resident Status
- [ ] Resident
- [ ] Non-Resident
- [x] Unknown

### SUSPECT

#### Name (L, F M)
- McGarry, Gage Robert
- **SUI** AKA

#### Occupation
- **Teacher**

#### Business Address
- Kansas City KS Public Schools / 3600 SPRINGFIELD ST,

#### DOB / Age
- [ ] 980
- Race: Sex: W M

#### Hgt: Wgt
- 6'00  175

#### Build: Hair Color: Eye Color
- Build: Hair Color Brown
- Glasses: Eye Color Blue

#### Hat: Shirt/Blouse: Coat/Suit: Socks

#### Jacket: Tie/Scarf: Pants/Dress/Skirt: Shoes

#### Was Suspect Armed?: Type of Weapon: Direction of Travel: Mode of Travel

#### VYR
- Make: Model
- NISSAN: VERSA

#### Style/Doors: Color: Lic/Lis: Vin
- Style/Doors: Color RED
- Lic/Lis: 649GTH - KS
- Vin: 3N1BC13E17L377126

#### Suspect Hate / Bias Motivated:
- [ ] Yes
- [x] No

### WITNESS

#### Name (Last, First, Middle)
- Davis, Justin James

#### Address
- Overland Park, KS

### NARRATIVE

On 06/27/2015 at approximately 2015 hours, I was dispatched to 8600 Shawnee Mission Pkwy at US Bank in reference to an intoxicated driver call. Dispatch noted that a witness, Justin Davis, observed a red car driving down Shawnee Mission Pkwy with no tire. He told dispatch that the tire came off on Shawnee Mission Pkwy and part of the tire was in Eastbound lanes.

Upon arrival, I observed a 2007 red Nissan Versa with Kansas license plate 649GTH facing the wrong direction in the drive through line at the US Bank. I made contact with the driver, Gage McGarry, who told me he was trying to change his tire. McGarry’s speech was very slurred, and he was having a lot of difficulty trying to use the jack for his vehicle. He said his tire blew out when he was driving on Shawnee Mission Pkwy. I looked at the wheel and the tire was completely shredded. The rim

Printed at: 12/30/2015 11:29

Page: 2
of the tire looked like it had been driven on for a while, as it had gashes and grooves from the asphalt. There were also scrapes on the asphalt of the parking lot where McGarry had driven the vehicle, which appeared to have been from the rim of the wheel. McGarry said that he did not have anything to drink, but when asked a second time, he said he had 2 beers. When I approached McGarry for a second time, I smelled a strong odor of alcohol on his breath. I also observed a 6 pack of beer in the driver's seat with 5 unopened bottles of beer and 1 missing. I asked McGarry for his driver's license and he began to get upset and said he was just trying to change his tire. Officer Castaneda asked McGarry how much he had to drink and McGarry started to get angry with him. McGarry then said he just told us that he had 2 or 3 drinks.

I then started the Standardized Field Sobriety Tests.

The first test was the Horizontal Gaze Nystagmus test. McGarry exhibited all six clues during this test. He showed lack of smooth pursuit in both the left and right eye, distinct and sustained nystagmus at maximum deviation in both the left and right eye, and the onset of nystagmus prior to 45 degrees in both the left and right eye. He did not show signs of vertical nystagmus. During this test, McGarry continued to turn his head with the pen light after being told repeatedly not to move his head and only follow the pen light with his eyes.

I explained and demonstrated the walk and turn test. During the instruction phase of the Walk and Turn, McGarry did not follow instructions as asked and started walking before I instructed him to start. He did not maintain the position I explained to him after he acknowledged that he understood my instructions. I had to tell him multiple times to stay in the starting position and to follow instructions. He did not keep his arms by his side during the instruction phase of the test. During the first part of the walking stage of the test, McGarry counted 9 steps, but walked 10. He also did not touch heel to toe on any of the first 9 steps, did not keep his arms on his sides and stepped off the line. He then stopped after he did an improper turn and asked, "Correct? Nine?" On his second 9 steps, he missed heel to toe on all 9 steps and did not keep his arms on his sides. This test independently shows signs of impairment.

I explained and demonstrated the one leg stand test. He exhibited 3 of 4 clues during this test. The clues observed were sways while balancing, uses arms to balance and puts foot down. This test independently shows signs of impairment.

I administered the finger to nose test. He touched his upper lip with the index finger of his right hand and did not extend his arm out as instructed. He also touched his upper lip with his index finger of his left hand.

I administered the number test, which I asked him to count backwards from 68 to 53. He counted in this sequence: 68, 67, 66, 65, 64, 63, 62, 61, 60, 59, 58, 57, 56, 57, 58, 59, 58, 57, 56, 55. This test independently shows signs of impairment.

I asked McGarry to recite the alphabet from the letter "c" to the letter "p" without without singing. He attempted to recite the alphabet, but he went too fast and slurred some of the letters together. He then recited the alphabet in this sequence: c, d, e, f, i, g, h, i, j, k, l, m, n, o, p.

I then read McGarry the Preliminary Breath Test (PBT) advisory. He refused to give a PBT sample.

I believed McGarry was under the influence of alcohol and placed him under arrest. I then did an inventory search of his vehicle and found the following: a small glass container in the glove box...
Incident / Investigation Report

Merriam Police Department

Officer's Narrative (continued)

containing a green leafy vegetation that smelled like marijuana, a metal pipe under the front driver's side floor mat that smelled of burnt marijuana and had burnt residue at one end, and 5 bottles of unopened beer. Nothing else of an apparent value of $500 or more was found. His vehicle was towed by Johnson County Tow.

At the station I gave McGarry a copy of the Implied Consent Advisory (DC-70) and read it aloud to him from a separate copy. I asked him to submit to a breath test on the Intoxlyzer 8000, but he refused to provide a breath sample. He was personally served her Officer's Notice of Suspension (DC-27). While I was speaking with McGarry after I read him the Implied Consent Advisory, he asked me why he was arrested. I told him it was for driving under the influence. In the conversation McGarry said, "My tire blew. Like, that's what happened. And I pulled over to the nearest spot, that's where it was, and I was trying to change my tire."

I read McGarry his Miranda Rights and he invoked his rights and did not wish to answer any questions.

It should be noted that after McGarry was removed from my patrol car, there was a strong odor of alcohol from within which was not there prior to him being in the car. While at the station he was placed in cell #2 and after he was removed there was a strong odor of alcohol from within which was not there prior to him being inside.

At the station, I tested the green leafy vegetation with a Lynn Peavey Quick Check marijuana test kit and it tested positive as marijuana. The green leafy vegetation weighed 0.1 grams. The marijuana and pipe were placed into property as evidence. The 5 bottles of beer were also disposed of at the station.

I made contact with the reporting party and witness, Justin Davis, who said he would come to the Merriam PD to fill out a voluntary statement based on what he observed. I will attach that statement upon receipt. A request was made for the in-car, VieVu and booking room video so it could be placed into property.

Nothing further.

Meyers - 5679
Incident / Investigation Report

Merriam Police Department

Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer (5679) MEYERS, CHRISTOPHER L

Supplement Type: VOUCHER PROPERTY

Date / Time 6/28/2015 18:55

167264 Voucher ID created for this supplement.
Incident / Investigation Report

Merriam Police Department

Additional Officer Supplements

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Officer (5679) MEYERS, CHRISTOPHER L

Supplement Type: VOUCHER PROPERTY

Date / Time 7/2/2015 15:25

167373 Voucher ID created for this supplement.
Attached Picture: ALCOHOL IN PASSENGER SEAT
Attached Picture: PASSENGER FRONT TIRE CLOSE
Attached Picture: TIRE JACK
Attached Picture: MARRIJUANA IN GLOVE BOX
MERRIAM POLICE DEPARTMENT
VOLUNTARY STATEMENT

I, Justin Davis, am not under arrest, nor am I being detained for any criminal offenses concerning the events I am about to make known to Officer Meyers.

I volunteer this information of my own free will, for whatever purposes it may serve.

| Last Name: | Davis |
| First: | Justin |
| Mid: | James |
| Street Address: | Overland Park, KS 66202 |
| Race: | Caucasian |
| Sex: | Male |
| Date of Birth: | 5-9 |
| Height: | 140 |
| Weight: | Hair: | Brown |
| Eye: | Blues |

STATEMENT:
I pulled out of Highpoint Apt on Shawnee Mission Pkwy heading west. I smelled smoke and saw a red car driving with a flat tire on the wheel smoking. The car was headed west at the huge gap came off. The car kept driving as the tire came off in front of the Nissan Dealership on S. Pkwy. The car continued west to the light at Antioch and was in the left lane. The driver then crossed all lanes to the right of headed north on Antioch and turned in to the bank parking lot of the U.S. Bank. I pulled it past the driver and witnessed the Merriam police dept pull in to address the driver who was out of his car apparently trying to change his tire.

When the driver of the red car got to the intersection at S. Pkwy & Antioch he was down to driving on his rim. The rim was spilling all over the road.

I have read this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials. I certify that the facts contained herein are true and correct.

DATE OF STATEMENT: 6/28/15 TIME: 21:49 (PAGE 1 of 1)

WITNESS: Signature: Justin Davis

EXHIBIT 6
EXHIBIT 7

Merriam Police Department
DRUG AND ALCOHOL INFLUENCE REPORT

Case #: 15-07715
Traffic Case:
Observation/BEGIN: 2019

Name: McCarty
DOB: 1980 w/M
Weight: 175
DL #: [redacted]
State: KS

I observed the above vehicle doing the following:
- Turning with a wide radius
- Observing the vehicle for 10 seconds
- Driving into opposing traffic
- Drifting
- Weaving
- Signal inconsistent with actions
- Headlights off
- Accelerating or decelerating rapidly
- Braking erratically
- Turning abruptly or illegally
- Improper or unsafe lane change
- Following too closely
- Driving on other than the roadway
- Appearing to be impaired
- Slow speed (more than 10 below)
- Stopping without cause in lane
- Slowed response to traffic signals
- Turning abruptly or illegally
- Other

Reaction time to emergency equipment:
- Stopped vehicle properly
- Fumbled getting license?
- Unsteady exiting vehicle?
- Alcohol in vehicle?
- Other

PERSONAL CONTACT

Fumbled getting license? □ Yes □ No
Unsteady exiting vehicle? □ Yes □ No
Alcohol in vehicle? X Yes □ No

BREATH: (Odor of Alcoholic Beverage) □ None □ Faint □ Moderate □ Strong

SPEECH: □ Good □ Fair □ Mumbled □ Slurred □ Profanity □ Soft □ Loud □ Other

EYES: □ Bloodshot □ Watery □ Glazed □ Droopy □ Normal □ Other

ATTITUDE: □ Polite □ Excited □ Talkative □ Carefree □ Sleepy □ Abusive □ Antagonistic
□ Cooperative □ Indifferent □ Insulting □ Combative □ Cocky □ Crying □ Other

SUSPECT FOOTWEAR: □ Shoes □ Sneakers □ Boots □ High Heels □ Low Heels □ Sandals □ Bare Feet
SUSPECT CLOTHING: □ Pants □ Shorts □ Dress □ Skirt □ Blouse □ Light Jacket □ Other

APPEARANCE: □ Neat □ Dirty □ Soiled □ Other

PRE ARREST SCREENING

HORIZONTAL GAZE NYSTAGMUS
Right □ Yes □ No
Left □ Yes □ No

LACK OF SMOOTH PURSUIT
□ Yes [redacted]

DISTINCT AND SUSTAINED NYSTAGMUS
□ Yes [redacted]

AT MAXIMUM DEVIATION
□ Yes [redacted]

ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES
□ Yes [redacted]

VERTICAL NYSTAGMUS
□ Yes [redacted]

TOTAL CLUES: 6

WALKING STAGE
1st 2nd
Stops while walking □ Yes □ No
Does not touch heel to toe □ Yes □ No
Steps off line □ Yes □ No
Raises arms □ Yes □ No
Improper turn □ Yes [redacted]
Incorrect numbers of steps □ Yes [redacted]

Comments: [redacted]

EXHIBIT 7

155
ONE LEG STAND

Leg Raised ☐ Left ☑ Right

TOTAL CLUES: 4

TEST
1. Sways While Balancing ☐ 1-10  ☑ 21-30
2. Uses Arms to Balance ☑ 12-20  ☐ 3-10
3. Hopping ☐ 1-10  ☐ 21-30
4. Puts Foot Down ☐ 1-10  ☐ 21-30

CANNOT DO TEST ☐

Comments:

OTHER FIELD SOBRIETY TESTS

Alphabet (describe performance):
Number (describe performance):
Finger to Nose (describe performance):
☐ Unable to complete
Touched Side: ☑ Right ☐ Left
Touched Lip: ☐ Right ☑ Left
Touched Bridge: ☐ Right ☑ Left

CHEMICAL TEST INFORMATION

Implied Consent Advisory Given to Subject? ☑ Yes ☐ No
Implied Consent Advisory Read to Subject? ☑ Yes ☐ No
Was PBT Administered? ☑ Yes ☐ No
Was PBT Reading Positive? ☑ Yes ☐ No

Did they have anything in their mouth?
Visually Inspected? ☑ Yes ☐ No
Type of Test Offered: ☐ Blood ☑ Breath ☐ Urine ☐ Refused

TEST RESULTS:
-grams of alcohol per 100 milliliters of blood or 210 liters of breath

ENVIRONMENTAL CONDITIONS

Weather: ☑ Clear ☐ Cloudy ☐ Rain ☑ Snow ☐ Fog ☐ Windy ☑ Calm
Temperature: 76°F

Road Conditions: ☑ Normal ☐ Holes ☐ Ruts ☐ Bumps ☐ Gravel

Surface Conditions: ☑ Dry ☐ Wet ☐ Snow ☑ Ice ☐ Other:

Lighting Conditions: ☑ Sunny ☐ Dark ☐ Moonlight Streetlights: ☑ On ☐ Off ☑ None

POST ARREST INTERVIEW

Miranda Given ☑ Yes ☐ No

Were you operating the vehicle? ☑ Yes ☐ No

Where were you going?
Where were you coming from?

What road were you on?
Actual Road:
What time is it right now?
Actual time

Have you been drinking or taking drugs? ☑ Yes ☐ No

What? How much? Where?

What time did you start? What time did you stop?

Do you feel you can operate a vehicle safely? ☑ Yes ☐ No

Do you feel you are under the influence now? ☑ Yes ☐ No

Have you been involved in an accident today? ☑ Yes ☐ No

Have you been drinking or taking drugs since the accident? ☑ Yes ☐ No

Are you ill or injured? ☑ Yes ☐ No

How are you ill or injured?

Have you been to a Dr or Dentist recently? ☑ Yes ☐ No

When?

Why?

Do you take prescription medicine? ☑ Yes ☐ No

What?

Are you diabetic? ☑ Yes ☐ No

Do you take insulin? ☑ Yes ☐ No

SUBJECT INVOKED MIRANDA RIGHTS AND REFUSED TO ANSWER QUESTIONS

CONCLUSIONS: Influence of Alcohol and or Drugs ☐ Slight ☑ Obvious ☐ Extreme ☐ Other

Comments:

Arresting Officer: Meyers  Badge #579  Assisting Officer

156
IMPLIES CONSENT ADVISORY

INSTRUCTIONS: A copy of this form is required to be provided to the person from whom testing is to be requested. From another copy of the form, the officer must also read each of the notices contained in the "Implied Consent Advisory" to the person. A space is provided on the reverse side for the officer to record the name of the licensee and the date. The officer may retain his copy of this form to document that the notices were provided. The officer must also certify on the DC-27 form that the notices were provided.

Notices are also provided on the reverse side of this form to be used if the person was operating a commercial motor vehicle, pursuant to K.S.A. 8-2,145, or if the person is under 21 years of age, pursuant to K.S.A. 8-1567a. If either of those notices apply and are provided by the officer, the officer must also certify on the appropriate certification form regarding those notices.

IMPLIES CONSENT NOTICES

1. Kansas law (K.S.A. 8-1001) requires you to submit to and complete one or more tests of breath, blood or urine to determine if you are under the influence of alcohol or drugs or both.

2. The opportunity to consent to or refuse a test is not a constitutional right.

3. You have no constitutional right to consult with an attorney regarding whether to submit to testing.

4. If you refuse to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, you may be charged with a separate crime of refusing to submit to a test to determine the presence of alcohol or drugs, which carries criminal penalties that are greater than or equal to the criminal penalties for the crime of driving under the influence if you have a prior refusal for an evidentiary test for alcohol or drugs or a prior conviction or diversion for DUI or driving a commercial motor vehicle with an alcohol content of .04 or more, and such prior refusal or conviction occurred on or after July 1, 2001, and when you were 18 years of age or older.

5. In addition, if you refuse to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, your driving privileges will be suspended for 1 year.

6. If you submit to a breath or blood test requested by a law enforcement officer and produce a completed test result of .15 or greater, your driving privileges will be suspended for 1 year.

7. If you submit to a breath or blood test requested by a law enforcement officer and produce a completed test result of .08 or greater, but less than .15, the length of suspension will depend upon whether you have a prior occurrence. A prior occurrence is a prior test refusal, test failure or conviction or diversion for an alcohol or drug related conviction as defined in K.S.A. 8-1013, and amendments thereto, or any combination thereof, whether before, on or after July 1, 2001.

8. If you fail a test with an alcohol content of .08 or greater, but less than .15, and do not have any prior occurrences, your driving privileges will be suspended for 30 days.

9. If you have a prior occurrence and fail a test with an alcohol content of .08 or greater, but less than .15, your driving privileges will be suspended for one year.

10. Refusal to submit to testing may be used against you at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

11. The results of the testing may be used against you at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

12. After the completion of testing, you have the right to consult with an attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

(After completing the above notices, refer to the reverse side of this form.)

DC-70 (Rev. 07/13)

EXHIBIT 8
.02 ADVISORY FOR DRIVERS UNDER 21


1. It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater; and

2. If the person is less than 21 years of age at the time of the test request and submits to and completes the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges will be suspended for 30 days and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.

CDL ADVISORY

IF THE PERSON WAS DRIVING A COMMERCIAL MOTOR VEHICLE, AS DEFINED BY KANSAS LAW, THE FOLLOWING NOTICE IS ALSO APPLICABLE. IF THE PERSON WAS NOT DRIVING A COMMERCIAL MOTOR VEHICLE, AS DEFINED BY KANSAS LAW, THE FOLLOWING NOTICE DOES NOT APPLY.

Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.

AFTER PROVIDING A COPY OF THIS FORM TO THE PERSON AND READING ALL APPLICABLE NOTICES, THE OFFICER SHOULD THEN REQUEST THAT THE PERSON SUBMIT TO A TEST OR TESTS, AS FOLLOWS:

WILL YOU TAKE A: ☑ Breath ☐ Blood ☐ Urine test (Indicate the test(s) offered)

RESPONSE: ☐ Yes ☑ No

The officer who administers testing should complete the following information on the copy of this form retained by the officer. The officer's copy of this form can be retained in the officer's file to document that the required notices were given.

Gage McGarry
Name of licensee

Meyers 5679
Name of law enforcement officer administering testing

06/27/15
Date

DC-70 (Rev. 07/13)
EXHIBIT 9

OFFICER'S CERTIFICATION AND NOTICE OF SUSPENSION
(SEE REVERSE SIDE FOR HEARING INFORMATION)

15-01715

DRIVER INFORMATION

Name (Last) McGary
(First) Greg
Current Address 7113 Ambina Dr
City Shawnee
State KS
Driver's License No. 612277
State of Issuance KS
Zip 66227

CDL YES NO CMV YES NO HAZMAT YES NO

ADDRESS: The address will be treated as a change of address if different from that on file with the Division of Vehicles, and will be used for all correspondence with the person unless the Division of Vehicles is notified by the person in writing of a different address or a change of address. You can change your address on the internet, by mail, or in person at a DMV office.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

CERTIFICATION INSTRUCTIONS: To certify a test refusal or test failure, (1) each officer must complete the statement, if necessary, (2) at least one officer must initial the line to the left of each of the statements intended to be certified and (3) each officer who initial a statement must sign in the space provided below.

1. On June 27, 2015, I have reason to believe that the above-named person, within the State of Kansas in Johnson County, had been operating a vehicle while under the influence of alcohol and/or drugs in violation of state law. I have been attempting to operate a vehicle while under the influence of alcohol and/or drugs in violation of state law. I have reasonable grounds to believe that the person was operating a vehicle; and/or I had been operating a commercial vehicle as defined in K.S.A. 8-1001(b), and amendments thereto, while having alcohol or other drugs in such person's system; and/or I am under 21 years of age while having alcohol or other drugs in such person's system.

2. The person had been placed under arrest or otherwise taken into custody or had been involved in a vehicle accident or collision.

3. The person was presented oral and written notice as required by K.S.A. 8-1001(b) and amendments thereto.

4. Check one: ( ) The person refused to submit to or complete testing as requested by a law enforcement officer. ( ) The result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath. NOTE: Please attach a readable copy of the test report.

5. Reason(s) for the initial contact and/or stop: ( ) Unlawful traffic violation(s) (explain below); ( ) Officer arrested at scene of accident; ( ) Vehicle already stopped; ( ) Other (explain)

6. Reasonable grounds for my belief that the person was operating or attempting to operate a vehicle: ( ) Suspected operating; ( ) Person identified self as driver; ( ) Other (explain)

7. Reasonable grounds for my belief that the person was under the influence of alcohol and/or drugs: ( ) Blood alcohol concentration; ( ) Breath alcohol concentration; ( ) Blood alcohol concentration; ( ) Person stated alcohol/drug consumption; ( ) Other (explain)

8. A copy of this document, which constitutes a Notice of Driver's License Suspension, is being served on the above-named person on June 27, 2015, by (check one) ( ) Officers; ( ) By first class mail to the address shown above. NOTE: Personal service is required if a determination of refusal or failure to test made while the person is in custody.

9. The testing equipment used was certified by the Kansas Department of Health and Environment.

10. The testing procedures used were in accordance with the requirements set out by the Kansas Department of Health and Environment.

11. I hereby certify to the Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-1001(b), and amendments thereto.

Temporary Driver's License

This Notice is:

( ) NOT VALID as a temporary license for the reason that your license: ( ) Issued expired; ( ) Issued revoked; ( ) Issued suspended; ( ) Issued cancelled; or ( ) You have no driver's license.

( ) VALID as a temporary license until the 30th day after the date of service of this document. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and the subject to the same restrictions as the driver's license surrendered.

Any temporary driver's license will end and your driving privileges will be suspended on the 30th day after service of this document unless an administrative hearing has been timely requested and the required $500 hearing fee paid, as set out in the INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ON THE REVERSE SIDE OF THIS FORM.

Before a test or tests are administered, the officer is required by K.S.A. 8-1001(b), and amendments thereto. To provide the person the oral and written notices contained on the implied consent advisory (DC-7B). If the person was driving a commercial motor vehicle, as defined by Kansas law, the oral and written notice required by K.S.A. 8-145 should also be given. If the person is under the age of 21, the oral and written notice required by K.S.A. 8-147 should also be given.

Distribution: 1st copy (white) copy to Division of Vehicles 2nd copy (yellow) for your file 3rd copy (pink) to license/issuer

DC-27 (Rev. 07/13)
NOTICE OF DRIVER’S LICENSE SUSPENSION
(Pursuant to K.S.A. 8-1002)

Based upon the certification on the reverse side of this form, your driving privileges are hereby suspended, pursuant to K.S.A. 8-1014, effective the 30th day after the date of service of this notice, unless a timely request for hearing is made, together with timely payment of the required hearing fee (see below). The action taken on your license depends upon whether the officer(s) certified a test refusal or a test failure (a completed test result of .08 or greater) and whether you have any prior “occurrences” on your driving record. “Occurrence” is defined in K.S.A. 8-1013(a), as amended by the 2013 legislature, as ‘a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one motor vehicle inspection’ and includes violations of K.S.A. 8-1507, 8-2-144, 8-1023, and for aggravated battery while committing an act described in K.S.A. 8-1507, as set out in K.S.A. 21-6412(b)(3). Entry into a diversion agreement in lieu of prosecution on a prior occasion is treated as a prior “alcohol or drug-related conviction,” pursuant to K.S.A. 8-1013(b)(2). You may request a copy of your driving record in writing from Central Office Operations, Division of Vehicles, Kansas Department of Revenue at PO Box 12021, Topeka, Kansas, 66601 or, visit hhttp://ksrevenue.gov to request a copy of your driving record online.

If paragraph 4 of the certification on the reverse side indicates you refused to submit to or complete a test, the following action will be taken on your driving privileges:

First Occurrence: 1 year suspension & 2 year Ignition Interlock restriction
Second Occurrence: 3 year suspension & 3 year Ignition Interlock restriction
Third Occurrence: 1 year suspension & 4 year Ignition Interlock restriction
Fourth Occurrence: 1 year suspension & 5 year Ignition Interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year Ignition Interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .08 or above, but less than .15, the following action will be taken on your driving privileges:

First Occurrence: 30 day suspension & 180 days of Ignition Interlock restriction If you have not previously had your driving privileges revoked, suspended, canceled or withdrawn or been previously convicted of any of the following violations: (1) K.S.A. 8-1509; (2) K.S.A. 41-727; (3) any violation listed in K.S.A. 8-285(d) or (4) been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period. If your driving privileges have previously been revoked, suspended, canceled or withdrawn or your driving record contains convictions as set out above, you will receive a 30 day suspension & 1 year of Ignition Interlock restriction.
Second Occurrence: 1 year suspension & 1 year Ignition Interlock restriction
Third Occurrence: 1 year suspension & 2 year Ignition Interlock restriction
Fourth Occurrence: 1 year suspension & 3 year Ignition Interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year Ignition Interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .15 or above, the following action will be taken on your driving privileges:

First Occurrence: 1 year suspension & 1 year Ignition Interlock restriction
Second Occurrence: 1 year suspension & 2 year Ignition Interlock restriction
Third Occurrence: 1 year suspension & 3 year Ignition Interlock restriction
Fourth Occurrence: 4 year suspension & 4 year Ignition Interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year Ignition Interlock restriction

If you possess a commercial driver’s license, the following additional action will be taken on your commercial driving privileges as a result of a conviction for violating K.S.A. 8-1507 or K.S.A. 8-1023 or upon a final determination that you have refused or failed a test, as defined in K.S.A. 8-1013, and amendments thereto.

First Occurrence, as defined by K.S.A. 8-1013(a): 1 year suspension of commercial driving privileges
Second Occurrence, as defined by K.S.A. 8-1013(a): permanent revocation of commercial driving privileges

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

A hearing request may be made either by mailing a written request which is postmarked within 14 calendar days after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles within 14 calendar days after the date of service of this form. If this form was served on you by mail, you will have an additional 3 days, pursuant to K.S.A. 60-209(d).

The hearing request must include your full name, driver’s license number, birth date and a telephone number at which your or your legal representative can be reached if necessary.

The hearing request must include your current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-246. All correspondence will be sent to the address provided in the hearing request.

The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer’s certification, you must appear at the hearing. If you do not appear, you will be deemed in default and the hearing officer’s decision will be final. If you fail to request any officer’s attendance at the time you make a hearing request, your right to contest that attendance by subpoena will be deemed waived and the hearing officer’s decision will be final. The hearing officer will not be present at the hearing.

You must pay a nonrefundable hearing fee of $60.00 within the time period for making a timely request for a hearing (check or money order enclosed). The $60 hearing fee must be postmarked within the time period for making a timely hearing request or your hearing request will be denied. (A fixed image of cash or a check or money order will not be accepted.) Checks should be made payable to: Administrative Hearing Section, Kansas Department of Revenue.

HEARING LOCATION: Upon receipt of your timely written hearing request and fee, a hearing will be scheduled by telephone conference call. You must request that the hearing be conducted in person before a representative of the Director of Vehicles. Any request for an in person hearing must be made at the time you request a hearing. A written notice will be mailed to you setting out the time, date and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.

Mail hearing requests to:
DL Administrative Hearing Section
Kansas Department of Revenue
P.O. Box 2744
Topeka, KS 66601-2744
(785) 296-6911

Send electronic facsimile (fax) requests to: (785) 296-0275

DC-27 (Rev. 07/13)
**ARREST REPORT**

<table>
<thead>
<tr>
<th>ID</th>
<th>ORG #</th>
<th>AGENCY NAME</th>
<th>CASE #</th>
<th>CASE #</th>
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<tbody>
<tr>
<td>1</td>
<td>KS0460300</td>
<td>Merriam Police Department</td>
<td>2016000683</td>
<td>15-01715</td>
</tr>
</tbody>
</table>

**MAGGAR, Gage Robert**

**IDENTIFICATION**

- **FINGERPRINT CLASS:**
  - KEY: [REDACTED]
  - MAJOR: [REDACTED]
  - PRIMARY: [REDACTED]
  - SUB-SECONDARY: [REDACTED]
  - FINAL: [REDACTED]

- **DATE OF BIRTH:** 03/18/1990
- **AGE:** 35
- **MISCELLANEOUS ID #:**

**RESIDENT**

- **HOME ADDRESS (STREET, CITY, STATE, ZIP):** 7113 Aminda St, Shawnee, KS 66227

**EMPLOYER (NAME OF COMPANY/SCHOOL):**

- **BUSINESS ADDRESS (STREET, CITY, STATE, ZIP):** 3600 Springfield St, Kansas City, KS 66103

**LOCATION OF ARREST (STREET, CITY, STATE, ZIP):**

- **ARRESTED:** Yes
- **DESCRIPTION OF WEAPON:**

**CMI#:**

- **DRUGS:**
- **ALCOHOL:**
- **VIOLENT CRIMES:**
- **NONVIOLENT CRIMES:**

**DATE OF ARREST:** 06/27/2016

**CHARGE 1:**

- **OFFENSE:** Poss Of Hallucinogenic Drug
- **UCR CODE:** 35A
- **STATE CODE/LOCAL ORD.:** 21 5708 b 3
- **WARRANT #:** E014363
- **DATE ISSUED:**
- **ARRESTED WITH (1) ACCOMPLICE (FULL NAME):**

**DATE AND TIME OF RELEASE:**

- **RELEASED TO:** Meyers, Christopher L
- **AGENCY DIVISION:** 6679

**REMARKS (NOTE ANY INJURIES AT TIME OF RELEASE):**

**SIGNATURE OF RECEIVING OFFICER:**

- **SUPREME COURT CASE #:**
- **SIGNATURE OF RECEIVING OFFICER:**

**EXHIBIT 10**
ADDITIONAL ARREST
NARRATIVE CONTINUED

The listed subject, Gage McGarry, was contacted on a traffic call. He had an odor of alcoholic beverage coming from him and admitted to consuming it. He failed sobriety tests, refused the PBT and was arrested. A search of McGarry’s vehicle revealed a small glass container with green leafy vegetation that smelled like marijuana in the glove box. Also, a silver metal pipe that smelled of burnt marijuana was located under the driver’s side front floor mat. I tested the green leafy vegetation at the station and it tested positive as marijuana. At the station he refused to provide a breath sample. He posted his $1,000.00 bond for DUI at the Merriam Police Department with a credit card and was released from the station. His court date is 07/28/2015 at 1100 hours in the Merriam Municipal Court.

Meyers 5679
EXHIBIT 11
VIDEO/CD
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the License
of Gage McGarry

Case No. 15-PPC-52
OAH No. 16ED0012

LICENSEE’S INDEX OF EXHIBITS

The Licensee, by and through counsel, submits the following index of exhibits list in this matter:

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>ID</th>
<th>Off</th>
<th>Admit</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Performance evaluation, 2013-14, school year.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Letter of reference from Julie Day (Jan. 28, 2016)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>9.</td>
<td>Letter of reference from Natalie Alewine (Feb. 1, 2016)</td>
<td></td>
<td></td>
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<td>10.</td>
<td>Letter of reference from Kristian Foster-Reynolds (March 7, 2016)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Note of thanks from student.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Note of thanks from student in practicum program for undergraduate degree.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the License
of Gage McGarry

Case No. 15-PPC-52
OAH No. 16ED0012

STATEMENT OF FACTS AND CHRONOLOGY

Gage McGarry holds a Kansas professional teaching license and an initial school leadership license. He has been continuously licensed in Kansas since 2012. He is employed as an English Language Arts teacher at Rosedale Middle School in Kansas City, Kansas, USD 500.

On the evening of June 27, 2015, Mr. McGarry was on his way home in Shawnee, Kansas by traveling westbound in his vehicle on Shawnee Mission Parkway. That road is a major arterial roadway in Johnson County, Kansas.

Mr. McGarry became aware that one of his tires had blown. Soon after that, he realized that he was driving on the wheel rim for the tire that had blown.

Mr. McGarry turned off Shawnee Mission Parkway at the first location where he could safely make a turn. As was preparing to change the blown tire for the spare, a police officer of the Merriam, Kansas Police Department approached him.

That officer then arrested Mr. McGarry for driving under the influence of alcohol. In a subsequent inventory search of Mr. McGarry’s vehicle, officers discovered a residual amount of marijuana and an item of drug paraphernalia.

He was charged with violations of city ordinances for possessing those items. He was also charged with refusing to take a preliminary breath test.

On September 17, 2015, Mr. McGarry entered into a diversion agreement with the City of Merriam for the charges. The agreement runs for twelve months. The diversion
agreement is not a conviction. Successful completion of the agreement results in a dismissal of the charges.

On October 22, 2015, Dr. Scott Myers of KSDE filed a complaint against Mr. McGarry seeking suspension of his license and all associated endorsements.
KANSAS CITY, KANSAS
ALCOHOL SAFETY ACTION PROJECT

SECURITY NATIONAL BANK BLDG.
M-8
707 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101
(913) 342-3011

CERTIFICATE OF COMPLETION

THIS CERTIFIES THAT CAGE MCGARRY HAS
completed the Kansas City Kansas Alcohol Safety Action Project's Drug
and alcohol information school. This eight hour educational series was
completed on OCTOBER 24, 2015.

BY

Janet Roberts

KANSAS CITY KANSAS ALCOHOL SAFETY ACTION PROJECT

KC2-39715.1
**GOAL STATUS**

<table>
<thead>
<tr>
<th>EMPLOYEE ID</th>
<th>14496</th>
</tr>
</thead>
<tbody>
<tr>
<td>EVALUATOR</td>
<td>Travis Helm</td>
</tr>
<tr>
<td>EVALUATEE</td>
<td>Gage McGarry</td>
</tr>
</tbody>
</table>

**GOAL:**

Effective Scaffolding of Information within Lessons
Identifying Critical Content
Understanding Students' Interests and Backgrounds

**COMMENTS ON GOAL STATUS:**

Mr. McGarry continues to be a huge asset to Rosedale Middle School. He is always willing to help out where we need him, rather it be to fill in as an administrator, work with a new teacher, or assist with a leadership role in priority school. Mr. McGarry has a very solid knowledge of his curriculum. He has very well managed classes, and has a number of creative activities to help keep his students engaged. Mr. McGarry's observations and ratings in Observation are attached.

**Attached Workflow**

**Current Status**

**Workflow Steps**

1. Signed by TRAVIS HELM on 02/01/2016 at 4:51 PM  
   Signature: Travis Helm
2. Signed by Gage McGarry on 02/01/2016 at 7:32 PM  
   Signature: Gage mcgarry

Disclaimer: Signature indicates evaluation has been completed and reviewed, not concurrence.
Employee has the option to submit a rebuttal within 10 duty days of signing this evaluation. You must contact Human Resources to obtain this form.
Observation Results for Gage McGarry

Observer: Tori Hill
Type: Sanford (Public)

Date Started: Jan 12, 2016 12:26 PM
Location: ROSEDALE MIDDLE SCHOOL

Date Submitted: Jan 13, 2016 9:55:00 AM
Evaluation: Based results on teacher's lesson

Domain 2: Planning and Preparing (v2)
The teacher plans for deep gaps identifiable in the plan, he or she describes methods for assessing student progress and measuring success.

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Effective Scaffolding of Information within Lessons

Within lessons, the teacher prepares and plans the organization of content in such a way that each new piece of information builds on the previous piece.

Evidence:

Planning Evidence:
1. Content is organized to build upon previous information
2. Organization of content is logical and progresses from simple to complex
3. Material organization, presentation of content is integrated with other content areas, other lessons and units
4. The plan includes potential conclusions that students may experience

Teacher Evidence:
1. When asked, the teacher can describe the rationale for how the content is organized
2. When asked, the teacher can describe the rationale for the sequence of instruction
3. When asked, the teacher can describe how content is related to previous lessons, units, or other content
4. When asked, the teacher can describe possible confusions that may impact the lesson or unit

Resources:
Scale:

Not Applicable Not Using Beginning Developing Applying Inventing

Comments:

Desired Effect: Within lessons, the teacher prepares and plans the organization of content in such a way that each new piece of information builds on the previous piece.

Applying the Scale: Within lessons, the teacher organizes content in such a way that each new piece of information clearly builds on the previous piece.

Today is the first day of the week in 3rd grade. The students are expected to read an article, watch a video on the first, and fill out a worksheet.

Today's lesson is a tutorial on the book "When Mani" and the students will be reading. It should give the students some background knowledge as they begin the book. This is the first piece of the scaffolding instruction.

From that, the student will have a very concrete understanding of how to scaffold lessons and help students make connections to build their understanding.

Overall Comments and Notifications

Notifications:
The observation has been completed by Travis Baim on Jan 13, 2016 9:51:55 AM
Gage McGarry acknowledged this observation on Jan 13, 2016 10:15:06 AM

Signatures

https://www.effectiveeducators.com/observation/show/589552ccc4b5948eaa1bc7ec
Observation Results for Gage McGarry

Domain 1: Classroom Strategies and Behaviors (v3)

Domain 1 is based on the C3 and Source of Teaching Framework and identifies the 41 elements or instructional categories that happen in the classroom. The 41 instructional categories are organized into 8 Design Questions (DQ) and further grouped into 8 Lesson Segments to define the Observation and Feedback Process. Domains 1 of the 2014 Iteration Teacher Evaluation Model is updated for deeper implementation of Georgia and Common Core State Standards. The resulting rubric elements to improve your student impact. Copyright Fish & Associates.

Identifying Critical Content

Focus Statement: The teacher continuously identifies and asks critical content during a lesson or part of a lesson that portrays a clear progression of information that leads to deeper understanding of the content.

Guided Effect: Students know what content is important and what is not important.

Evidences:

Example Teacher Evidences:
1. Teacher highlights critical content that portrays a clear progression of information related to standards or goals.
2. Teacher identifies differences between critical and non-critical content.
3. Teacher continuously asks students' attention to accurate critical content.
4. Teacher integrates over-curricular connections to critical content.

Example Student Evidence:
1. Students can describe the level of importance of the critical content addressed in class.
2. Students can identify the critical content addressed in class.
3. Students can explain the difference between critical and non-critical content.
4. Formative data show students were on the critical content (e.g., questioning, attentiveness).
5. Students can explain the progression of critical content.

Resources:

State | Reflection Questions | Video

Scale:

Not Applicable | No Using | Beginning | Developing | Excellent | Innovating

Comments:

Obligated Effect: Students know what content is important and what is not important.

Applying it: Signals to students critical versus non-critical content and portrays a clear progression of information and content for evidence of the extent to which the majority of students are attending to critical versus non-critical content.

Teacher explained what was not going to be graded in prior lessons, i.e., identifying non-critical information. This lesson is a lead into a notebook lesson where students work with the students will read.

Students were able to identify the critical information of the lesson.

Overall Comments and Notifications

Notifications:

This observation was completed by Travis Lehen on Jan 13, 2016 9:02:55 AM
Gage McGarry acknowledged via distribution on Jan 13, 2016 10:35:59 AM

https://www.ificomment.com/observation/show/569552d6d060466522b4
Signatures

Observer Signature: ____________________________ Date: __________

Learner Signature: ____________________________ Date: __________
Observation Results for Gage McGarry

Domain 1: Classroom Strategies and Behaviors (v3)

Domain 1 is based on the Art and Science of Teaching Framework and identifies the 41 instructional strategies that happen in the classroom. The 41 instructional strategies are organized into 9 Design Questions (DQ) and further categorized into 3 primary categories to frame the observation and feedback process. Domain 1 of the 2014 Kansas Teacher Evaluation Tool is updated for deep implementation of College and Career Readiness Standards containing explicit references to cognitive (cog) and cognitive skills. (Copyright Robert J. Marzano)

Understanding Students’ Interests and Backgrounds

Focus Statement: The teacher uses student interests and backgrounds to produce a climate of acceptance and community.

Desired Effect: Students’ perceptions of acceptance and sense of community are enhanced as a result of the teacher establishing understanding of students’ interests and backgrounds.

Evidences:

Example Teacher Evidence:

- Teacher relays content-specific knowledge to personal aspects of students’ lives.
  - Teacher has discussions with students about events in their lives.
- Teacher has discussions with students about topics which they are interested.
- Teacher builds students’ interests/needs.
  - Teacher uses discussions of students’ personal interests to highlight or reinforce creative skills (e.g., demonstrating growth mindset).

Example Student Evidence:

- Students describe the teacher as someone who knows them and is interested in their lives.
- Students respond when the teacher demonstrates understanding of their interests and backgrounds.
- Students feel comfortable and accepted by the teacher.
- Students can describe how their personal interests are connected to academic skills (e.g., building a growth mindset).

Resources:

Scale: 1 Reflection Questions | Vote

Scale:

Not Applicable | Not Using | Beginning | Developing | Applying | Innovative

Comments:

Desired Effect: Students’ perceptions of acceptance and sense of community are enhanced as a result of the teacher establishing understanding of students’ interests and backgrounds.

Applying it, the teacher’s interests and backgrounds are demonstrated in interactions with students and teachers role for inclusion of the sense of community in the classroom among the majority of students.

This element sets the most preferable level of relationships. For example, making connections around current interests or student interests. Getting to know student backgrounds and aspects of students’ lives and bringing that into their discussions with others. There is a relaxed mood in the room, the students express themselves, and ask questions and share with Mr. McGarry. However, the personable aspect is also evident in the way you interact with students.

Reflection questions for applying: How might your school and create new strategies and techniques for engaging students’ interests and backgrounds during interactions with students that promote unique student needs and interests for all students?

Overall Comments and Notifications

Notifications:

This observation has been completed by Travis Reif on Jan 13, 2016 5:21:08 PM
Gage McGarry acknowledged this observation on Jan 13, 2016 10:20:00 AM

https://www.effectiveducators.com/observation/show/563952e4b024b9401b0b0c0

Page 1 of 2
GOAL: To make more parental contact, primarily positive

COMMENTS ON STATUS GOAL:
This goal is centered around communication with parents. The teacher will call parents for positive and negative reasons. The teacher will also look for other ways to communicate with parents and get them involved.

Mr. McGarry wanted to make a point this year to call parents not just when students are misbehaving, but when they are doing what they are supposed to do. Mr. McGarry continues to look for opportunities to contact parents and improve in this area.

The evaluator feels that at this point in time, Mr. McGarry is meeting his goal. Parent contact and involvement is vital to students success. As a building, it is something that we want to continue to focus and improve on.

EVALUATEE'S COMMENTS (OPTIONAL):

SIGNATURES ___________________________ DATE 2-11-15

WHITE COPY - PERSONNEL FILE; CANARY COPY - TEACHER; PINK COPY - EVALUATOR
EVALUATEE: Gage McGarry
EVALUATOR: Travis Helm
EMPLOYEE ID: 14496

GOAL: To utilize a variety of checking for understanding methods

COMMENTS ON STATUS GOAL:
The purpose of this goal is for Mr. McGarry to become more familiar with a variety of checking for understanding strategies and use them in his classroom.

Mr. McGarry has taken on a variety of leadership roles within the building this year. One of those leadership roles is to work with first year teachers. When working with other staff members around the area of instruction, it forces you to reflect on your own instruction.

Like any good teacher, Mr. McGarry makes it a point to emphasize checking for understanding to know if a student is ready to move on, need re-teaching, or a total adjustment. Mr. McGarry utilizes whiteboards, popsicle sticks, productive talk, and task attack (for student feedback) as methods for checking for understanding.

The evaluator feels that at this point in time, Mr. McGarry is meeting his goal.

EVALUATEE'S COMMENTS (OPTIONAL):

SIGNATURES

DATE 2-11-15

WHITE COPY - PERSONNEL FILE; CANARY COPY - TEACHER; PINK COPY - EVALUATOR
GOAL STATUS

EMPLOYEE ID 14496
EVALUATOR Nanette Coleman
EVALUATEE Gage McGarry

GOAL:
1. Communicating Learning Goals and Feedback
2. Helping Students Interact with New Knowledge

COMMENTS ON GOAL STATUS:
On April 3, 2014, I observed the students in Mr. McGarry's room engaged in discussion and activly around Utopia, in an effort to prepare the students for the upcoming novel The Giver. The group discussions were intentionally planned and it leaned itself for students to draw from their own knowledge and experiences.

On April 4, 2014, the students were reading the new novel, then there was a group discussion that allowed to check for the students understanding around the reading. I like the intentionality of the planning of questions for the novel and hopefully it will continue to keep students engaged in the reading.

Goals. 1) Communication learning goals and providing feedback has not be observed during observations in Mr. McGarry's classrooms, but maybe this will be something he will focus on being intentional about during the remainder of this unit on The Giver.

2) Helping students Interact with new knowledge has been observed, and I believe Mr. McGarry has been intentional on getting students excited about the new material being covered in class.

Attached Workflow  Std. Signature II
Current Status Approved
Workflow Steps

1. Signed by NANETTE COLEMAN on 04/04/2014 at 0:00 PM  ADM PRINC MS
   Signature: Nanette M. Coleman
2. Signed by Gage McGarry on 04/04/2014 at 1:55 PM  TCH MS
   Signature: gage mcgarry

Disclaimer: Signature indicates evaluation has been completed and reviewed, not concurrence. Employee has the option to submit a rebuttal within 10 duty days of signing this evaluation. You must contact Human Resources to obtain this form.
GOAL STATUS

EMPLOYEE ID       14496
EVALUATOR         Nanette M. Coleman
EVALUATEE         Gage McGarry

GOAL:
1. Tracking Student Progress

2. Identifying Critical Information

COMMENTS ON GOAL STATUS:
10/31/13 9:04am

Mr. McGarry had a timer going while students were working on their persuasive 'Real Estate' brochures, to relevant to the house they had just read about in their prior lesson. All students were engaged and on task. Once the timer sounded Mr. McGarry transitioned into the new learning they students were about to get.

Mr. McGarry did a really nice job transitioning to the next section of class. He provided the students with an inventory sheet to start their thinking around the theme's that would be included in their new reading.

Recommendations and/or concerns:
1. I would like to see Mr. McGarry's obj, and focus question described more to identify what he wants the students to learn.
2. Make sure that he front-loads the new information with his students to ensure he is getting the expected outcome.

11/1/13 1:26 PM

Mr. McGarry did a really nice job of front loading new content with his students using K-W-H-L chart and providing them with the vocabulary they would be learning. The activities in which introduced these were appropriate and worked very well for what the students needed.

Goals:
I did not see evidence on Goal #1 but for Goal #2 it was very evident with his new unit that Mr. McGarry front loaded what the students will need to get started, and I will follow up in future lessons to see if he continues to review and/or front load the critical information needed for students.

Attached Workflow            Std. Signature

1st Semester Non-Tenured 2nd year Teacher  Completed: 11/04/2013
1 Signed by NANETTE COLEMAN on 11/01/2013 at 4:33 PM
Signature: Nanette Coleman

2 Signed by Gage McGarry on 11/04/2013 at 6:00 PM
Signature: Gage McGarry
Disclaimer: Signature indicates evaluation has been completed and reviewed, not concurrence. Employee has the option to submit a rebuttal within 10 duty days of signing this evaluation. You must contact Human Resources to obtain this form.
GOAL STATUS

EMPLOYEE ID  14496
EVALUATOR  Michael Sechler
EVALUATEE  Gage McGarry

GOAL:
Increase active engagement in classroom.

Bettering my ability to check for understanding

COMMENTS ON GOAL STATUS:
Mr. McGarry is employed at Rosedale Middle School. During the 2012-2013 school year Mr. Sechler, Assistant Principal has supervised Mr. McGarry. We have had held meetings, discussions and a formal evaluation.

On my observation, Mr. McGarry had students taking a pre-test over figurative language. When they finished they discussed the similarities and differences of Tell Tall Heart. When discussing these similarities and differences, Mr. McGarry would pull popsicle sticks to decide who would be chosen to answer the next question. I saw many hands go up to answer the question but they knew that they were only able to answer if their name was called.

Next they went on to discuss the pre-test they had taken earlier, Mr. McGarry continued to pulled popsicle sticks to increase the engagement as well as checking their understanding of the concepts be taught. As he asked students questions pertaining to figurative language, Mr. McGarry did a good job following his question up with another question to see if they understood or if they were just guessing.

Attached Workflow
Current Status  Std. Signature
Workflow Steps
1. Signed by MICHAEL SECHLER on 10/31/2012 at 3:20 PM  ADM PRINC ELD
   Signature: Michael Sechler
2. Signed by Gage McGarry on 10/31/2012 at 3:24 PM  TCH MS
   Signature: Gage McGarry
   Disclaimer: Signature indicates evaluation has been completed and reviewed, not concurrence. Employee has the option to submit a rebuttal within 10 duty days of signing this evaluation. You must contact Human Resources to obtain this form.
GOAL STATUS

EMPLOYEE ID: 14496
EVALUATOR: Mick Sechler
EVALUATEE: Gage McGarry

GOAL:
1. Increase active engagement in classroom

2. Bettering my ability to check for understanding

COMMENTS ON GOAL STATUS:
Mr. McGarry is employed at Rosedale Middle School. During the 2012-2013 school year Mr. Sechler, Assistant Principal has supervised Mr. McGarry. We have had held meetings, discussions and a formal evaluation.

On my second semester observation, Mr. McGarry's students were studying the novel Witch Child. They were making inferences about the readings. As Mr. McGarry was speaking, he did a great job using specific vocabulary words that the students would need to know to be successful in this assignment. He used them in great detail and in ways the students could understand the meaning.

Next, Mr. McGarry pulled popsicle sticks to pair up the students. The students moved with their partner and went to work on their assignments. Mr. McGarry did a good job checking each group's level of understanding.

Mr. McGarry has successfully met each of his goals; I would like for Mr. McGarry to continue to incorporate these strategies in his classroom, as they are aligned with the goals of the school. I have no doubt that he will continue this task. As I look back at his previous evaluation, I recommended that he start using some cooperative learning strategies and he has done just that. I would recommend McGarry for a contract for the 2013-2014 school year.
GOAL STATUS

EVALUATEE: Gage McGarry
EVALUATOR: Michael Sechler

SOCIAL SECURITY NUMBER: 458-87-9338
GOALS:
1. Increase active engagement in classroom.
2. Bettering my ability to check for understanding

COMMENTS ON STATUS OF GOAL.
Mr. McGarry is employed at Rosedale Middle School. During the 2012-2013 school year Mr. Sechler, Assistant Principal has supervised Mr. McGarry. We have had held meetings, discussions and a formal evaluation.

On my observation, Mr. McGarry had students taking a pre-test over figurative language. When they finished they discussed the similarities and differences of Tell Tall Heart. When discussing these similarities and differences, Mr. McGarry would pull popsicle sticks to decide who would be chosen to answer the next question. I saw many hands go up to answer the question but they knew that they were only able to answer if their name was called. Next they went on to discuss the pre-test they had taken earlier, Mr. McGarry continued to pulled popsicle sticks to increase the engagement as well as checking their understanding of the concepts be taught. As he asked students questions pertaining to figurative language, Mr. McGarry did a good job following his question up with another question to see if they understood or if they were just guessing.

Goal 1: To Increase active engagement in classroom.
In regards to this goal, Mr. McGarry has and has been using his popsicle sticks to increase not only his active engagement but his checking for understanding. Throughout the class period, Mr. McGarry, used this strategy, and you can tell from the class he consistently uses this method.

Goal 2: Bettering my ability to check for understanding.
Mr. McGarry along with goal one, has demonstrated in a few of the observation that he is working towards this goal.

Goal 3:
I would like for Mr. McGarry to continue to work on his goals. He does have a good grasp with the different types of engagement strategies. I would also like for him to start to incorporate more cooperative learning strategies into his class. (partners, groups etc.)

SIGNATURE ___________________________ DATE ____________
SIGNATURE ___________________________ DATE ____________

COPY 1 PERSONNEL FILE  COPY 2 TEACHER  COPY 3 EVALUATOR
# Classified Employee Evaluation Form

**Employee's Name:** McGarry  
**Employee ID:** 14496  
**Position:** Assessment Manager  
**Location:** Sunnun  
**Date:** 05/04/2012  
**Reason for Review:** Annual

## Evaluation Ratings

<table>
<thead>
<tr>
<th>1. Superior Performance</th>
<th>Comments: Exceeds job requirements and clearly demonstrates outstanding performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Exceeds Expectations</td>
<td>Comments: Significantly exceeds job requirements</td>
</tr>
<tr>
<td>3. Meets Expectations</td>
<td>Comments: Performs job requirements and expectations</td>
</tr>
<tr>
<td>4. Needs Improvement</td>
<td>Comments: Specific improvements are required to meet job requirements</td>
</tr>
<tr>
<td>5. Unsatisfactory</td>
<td>Comments: Does not meet job requirements and expectations</td>
</tr>
</tbody>
</table>

## Evaluation Areas

### Ratings

<table>
<thead>
<tr>
<th>Area</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organization: Plans ahead to maintain steady progress; recognizes strategic variables in advance</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Judgement: Uses good judgment in making decisions after comparing and analyzing available information</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Productive: Produced quality work on time</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Trustworthiness: Maintains confidence in sensitive matters</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Efficiency: Efficiently utilizes time on the job in most effective manner</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Attitude: Willingness to accept assignments with the appropriate enthusiasm and initiative</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Coordinates: Informs co-workers related to tasks of actions and decisions</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Dependability: Follows instructions, adjusts to peak workloads to accomplish assignments</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Versatility: Able to perform other services outside primary area of responsibility</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Accuracy: Produces precise work, free from error, neat and clear</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Initiative: Originates useful ideas, makes feasible suggestions for improvement</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Cooperation: Able to successfully interact with others and willingness to help co-workers</td>
<td>Superlative Performance</td>
</tr>
<tr>
<td>Job Knowledge: Understands and fulfills job responsibilities and objectives</td>
<td>Superlative Performance</td>
</tr>
</tbody>
</table>

Classified (Other)  
Completed: 06/04/2012
COMMUNICATION SKILLS: Expresses ideas clearly in good grammatical form, both written and verbal

ATTENDANCE AND PUNCTUALITY: Abides by the attendance policy and maintains prescribed working hours

PERSONAL APPEARANCE: Cleanliness and personal hygiene, neatness and appropriate attire

COMMENTS:
An exceptional employee

Evaluation Summary

Overall Performance Rating

General Level of Performance

SUPERIOR PERFORMANCE

Evaluator's Remarks
Gage came into the assignment at mid-year and excelled in all aspects of the job

Employee's Remarks (If any)

Employee's Signature
Signature: ____________________________ Date: ________________

Evaluator's Name
Gage McGarry

Evaluator's Signature
Signature: ____________________________ Date: ________________

Completed: 06/04/2012
January 28, 2015

Dear Kansas State Board of Education Professional Practices Commission,

My name is Julie Day and I'm writing this letter in reference to Mr. Gage McGarry. I am the 7th and 8th grade Targeted Literacy Instructor (TLI) at Rosedale Middle School in Kansas City, Kansas, USD 500. I have been teaching in the KCKPS District for ten years. I have been a member of the Rosedale Middle School leadership team for the past two years, I have instructed and trained a student teacher, I am currently a mentor teacher, and I was the STAR Teacher for the 2013-2014 school year.

Mr. McGarry was one of the teachers I was fortunate enough to mentor and collaborate with. He is extremely intelligent, organized, structured, and creative. He creates rigorous and differentiated unit plans, lessons, assignments, and activities, which engage all learners at every level.

Mr. McGarry researches, plans, and delivers excellent instruction to his students. His students consistently show academic growth year after year on state assessments. It is clear, as an eighth grade teacher, which students had Mr. McGarry for seventh grade English Language Arts. His students come well prepared for 8th grade English.

Mr. McGarry is an active member of our BIST (Behavior Intervention Support Team), Literacy Cadre, and was elected as the Literacy Cadre reform member to develop and help implement our school wide writing strategy. He is currently serving as the seventh grade Team Lead and is regularly called upon to be an acting administrator when ours are out of the building. As a member of the Aspiring Leaders Academy for USD 500, a Thinking Strategies Cadre member, and a member of the building Leadership Team, Mr. McGarry was called upon to present and lead staff in various leadership capacities. He is currently a Beginning Teacher Mentor and was a mentor teacher for a MidAmerica Nazarene University student's practicum.

Mr. McGarry is resourceful, helpful, and a leader in our school. He is not only a leader professionally, but has the ability to build relationships and guide and mentor his students successfully. Mr. McGarry's students respect and trust him, as do their parents and members of the community. He is an excellent educator, administrator, role model, and leader at Rosedale Middle School.

I can personally attest to the fact that I have never witnessed Mr. McGarry conduct himself in anything other than a respectable, professional manner. I have never witnessed Mr. McGarry involving himself with any illegal substances, alcohol, or anything prohibited by law or the school district, nor has his behavior ever implied that he has.

Sincerely,

Julie Day
Targeted Literacy Instructor- Rosedale Middle School
Kansas City, Kansas Public School District
913.627.6933 julie.day@kckps.org
Natalie Alewine

3600 Springfield Street,
Kansas City, KS 66103
913-607-6900
natalie.alewine@kcks.org

Date: 02/01/2016

To Kansas State Board of Education Professional Board of Ethics:

I am a third year special education collaborative teacher working at Rosedale Middle School. I have worked in eight different classrooms throughout this school and have seen all manner of teaching styles and strategies. When I started my career in the Kansas City Kansas Public Schools Mr. Gage McGarry was assigned as my in-building mentor and as my ELA co-teacher. He took this job very seriously. Anytime that I needed resources, or ideas Mr. McGarry was there to help me brainstorm, help me with activity ideas, and create lessons collaboratively. He worked with me while I learned how to implement BIST properly, research new learning strategies, and find interactive ways to make dynamic lessons for our students.

While learning how to be a better teacher I observed Mr. McGarry on a daily basis and learned what it means to care for kids. Everyday he integrates technology, differentiation, and a passion for education into his lessons. When planning his lessons he makes sure to meet kids where they are at and teach accordingly. Mr. McGarry works diligently to create an effective teaching environment where kids feel safe to learn and can grow into life-long learners.

As a seventh grade team leader Mr. McGarry is able to keep his coworkers organized and on task, while being a role model for how other teachers should be. During these meetings he is professional and acts as a resource for other teachers to work with. He is well prepared everyday to come to work and inspire people.

Gage McGarry is adept at inspiring excellence in his students. He raises the bar and uses every resource he has to make sure that his students have the ability to surpass it. This is a skill that brings out the best in students. When kids achieve in his class they are proud because they know it means something; they know they earned it.

Gage McGarry has never been in possession or under the influence of illegal drugs or alcohol on school grounds. He has never taught class or come to any school function impaired.

Sincerely,

[Signature]

Natalie Alewine
Special Education Collaborative Teacher
Attn. Kansas State Board of Education Professional Practices Commission:

I have had the pleasure of knowing Mr. Gage McGarry since the fall semester of 2003 when he and I began teaching together at Southwest Charter School. Several years later, during the 2011-2012 school year, I was Mr. McGarry’s supervisor in his position as School Assessment Manager at Sumner Academy of Arts and Science. At no point in the over 13 years that I have known Mr. McGarry has there ever been any evidence that he was under the influence of any substance while performing his professional duties.

The school that Mr. McGarry and I began teaching at served a high at-risk and low SES student population. Our resources were scarce and our students faced a variety of hardships outside of school that impacted their ability to focus and learn. It was in providing support for our students in need that I first witnessed Mr. McGarry’s compassion and dedication to education. He consistently made efforts to ensure that students had materials and resources that they needed for class. Tutoring sessions were held after school and he would differentiate his instruction to accommodate his student’s learning needs. He and I shared many of the same students and we, along with other content teachers, met regularly to strategize how to best support various kids. Mr. McGarry also started up a soccer team for our student’s, demonstrating his belief in the need for kids to be involved in activities outside of the classroom. It would be a loss for students if Mr. McGarry is unable to continue working in education.

As the SAM at Sumner, Mr. McGarry made it a point to develop professional relationships with our staff, which helped him to gain the support needed to create a smooth and relatively stress-free testing schedule. He also effectively planned, coordinated, and carried out our rigorous testing schedule, which speaks volumes towards his organization skills. In addition to his SAM duties, Mr. McGarry readily helped out with other tasks and events, such as supervision of various activities and providing some tutoring for students and data based instructional support for teachers. He is clearly a highly competent and driven individual, skills that were recognized by our principal who assigned Mr. McGarry to be our Summer School Coordinator during the 2012 session. Mr. McGarry’s effective collaboration and coordination skills will be an asset to your administrative and instructional teams.

I have no doubt at all in my mind that Mr. Gage McGarry has ever done anything to compromise the safety of his students or his professional ethics. He is an excellent educator and punishing him in such a way that would impact his career going forward would be a disservice. I will reiterate that I have no reason what so ever to believe that he has ever been under the influence of any substance while working in his professional capacity as an educator. If you have further questions please do not hesitate to contact me.

Sincerely,

[Signature]

Kristian Foster-Reynolds
Assistant Principal
Sumner Academy of Arts and Science
#913-627-7217
Dear Mr. McGarry,

Happy Teacher Appreciation Day! You helped me a lot last year. Thank you for dealing w/me & my attitude.

Wish I still heard you! Bye.

Sincerely,

Viridiana Ramirez.
Thanks to you,
I'm DOING A LITTLE
HAPPY DANCE!
Thank you, Val. The Carney.

Thank you for your help and your leadership.

I trust everything you do for these extraordinarily kids.

Sincerely,

[Signature]
BEFORE THE KANSAS STATE DEPARTMENT OF EDUCATION

In the Matter of the License of
GAGE McGARRY

Case No. 15-PPC-52
OAH No. 16ED0012

ORDER

On March 29, 2016, the hearing in this matter was convened.

After hearing the evidence in this case, the Professional Practices Commission (PPC) determined that the matter should be continued to the first meeting/hearing date after the completion of Mr. McGarry’s diversion.

The PPC also requires Mr. McGarry to submit two hair follicle tests, at his own expense: the first, within a week from the date of the hearing; and the second, approximately 30 days prior to Mr. McGarry’s next appearance before the PPC.

Once the hearing date is established, a deadline will be established for Mr. McGarry to provide any additional documentation to the PPC with regard to his rehabilitation.

IT IS SO ORDERED.

Michele L. Tunnell
Administrative Law Judge
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612
CERTIFICATE OF SERVICE

On Apr 4, 2016, I mailed a copy of this document to:

Gage McGarry
7113 Aminda Dr.
Shawnee, KS 66086

Ted J. Lickteig
Attorney at Law
Greystone Office Plaza, Ste. 112
12760 W 87th St.
Lenexa, KS 66215 2878

Kelli M. Broers, Attorney
Kansas State Department of Education
900 SW Jackson, Ste. 102
Topeka, KS 66612
Telephone: 785-296-3204

Theresa Coté, Secretary
Professional Practices Commission
Kansas State Department of Education
900 SW Jackson, Ste. 656
Topeka, KS 66612

[Signature]
Staff Person
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612
Telephone: 785-296-2433
April 20, 2016

Kelli M. Broers
Attorney
Kansas State Department of Education
900 SW Jackson, Suite 102
Topeka, Kansas 66612

Re: In the Matter of the License of Gage McGarry, No. 15-PPC-52, OAH No. 16 ED 12.

Dear Ms. Broers:

I have enclosed a statement of my client Gage McGarry to effect a voluntary surrender of his education licenses with the State of Kansas.

I have advised Mr. McGarry of the hearing time for this matter of April 25, 2016 at 11 a.m. and of his right to appear at that hearing.

We request that the Kansas reporting system for this matter reflect only that Mr. McGarry has voluntarily surrendered his licenses. Likewise, we request that any reporting to any national reporting system or database be limited to reflect only that he has voluntarily surrendered his licenses.

Any reporting beyond the fact that Mr. McGarry has voluntarily surrendered his licenses will be viewed as an unwarranted additional punishment.

Sincerely,

Ted J. Lickteig

Cc: Gage McGarry
April 20, 2016

I, Gage McGarry, voluntarily surrender my teaching and administrative licenses in the State of Kansas.

Sincerely,

Gage McGarry
7113 Aminda Dr.
Shawnee, KS 66227

VERIFICATION

STATE OF Kansas
COUNTY OF Johnson ss:

BE IT REMEMBERED that on this 20 day of April, 2016, before me, the undersigned, a notary public in and for the county and state aforesaid, came Gage McGarry, who is personally known to me to be the same person who executed the within instrument and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

December 8, 2018
BEFORE THE PROFESSIONAL PRACTICES COMMISSION
KANSAS STATE DEPARTMENT OF EDUCATION

In the Matter of the License of  
GAGE McGARRY

Case No. 15-PPC-52
OAH No. 16ED0012

INITIAL ORDER

Statement of Case

The above-captioned case comes on for hearing before the Professional Practices Commission (Commission) of the Kansas State Department of Education (KSDE) upon the Complaint filed by the KSDE against the licensee, Gage McGarry, seeking suspension of his license and all associated endorsements.

The hearing in this matter was convened on March 29, 2016. Appearing for the Commission were chairperson, Linda Sieck, and members, Bradley Nicks, Dorsey Burgess, Justin Henry, John McKinney, Jessica Snider, and Ginger Riddle.

Mr. McGarry appeared in person and with his counsel, Ted J. Lickteig.

Kelli Broers appeared as counsel for the KSDE.

After hearing the evidence, the Commission determined that the matter should be continued to the first meeting/hearing after the completion of Mr. McGarry's diversion period. The Commission also required Mr. McGarry to submit two hair follicle drug tests, at his own expense: the first, within a week from the date of the hearing; and the second, approximately 30 days prior to Mr. McGarry's next appearance before the Commission.
On April 14, 2016, the undersigned Administrative Law Judge (ALJ) was advised that in lieu of submitting a drug test, Mr. McGarry had elected to voluntarily surrender his license effective May 20, 2016.

On April 18, 2016, a status conference was convened with counsel. Mr. Lickteig appeared on behalf of Mr. McGarry. Ms. Broers appeared on behalf of the KSDE. Mr. Lickteig was advised that although his client wished to voluntarily surrender his license, the Commission could recommend to the Kansas State Board of Education (Board) that his surrender not be accepted and that discipline, up to revocation, could be imposed. Mr. Lickteig was advised that he and Mr. McGarry could appear on April 25, 2016 to present any testimony or evidence with regard to Mr. McGarry’s decision not to take the drug test and voluntarily surrender his license. It was recommended that Mr. Lickteig formally submit Mr. McGarry’s surrender by letter to Ms. Broers.

On April 20, 2016, Mr. Lickteig submitted a letter to Ms. Broers to which Mr. McGarry’s statement that he was voluntarily surrendering his teaching and administrative licenses in the state of Kansas was attached. In the letter, Mr. Lickteig stated that he had advised Mr. McGarry of the hearing time and of his right to appear. He also requested that all reporting systems reflect only that Mr. McGarry voluntarily surrendered his license.

On April 22, 2016, the undersigned ALJ received notification by email from Mr. Lickteig that neither he nor Mr. McGarry would be appearing before the Commission on April 25, 2016.
On April 25, 2016, the hearing was again convened. Appearing for the Commission were chairperson, Linda Sieck, and members, Dorsey Burgess, Bradley Nicks, Tavis DeSormiers, Justin Henry, Kimberly Groom, and Jessica Snider.

As previously stated, neither Mr. McGarry nor his counsel appeared.

Kelli Broers appeared as counsel for the KSDE.

Ms. Broers presented Mr. Lickteig’s letter with Mr. McGarry’s voluntary surrender.

For the reasons stated below, the Commission unanimously recommends to the Board that Mr. McGarry’s voluntary surrender not be accepted and that revocation of his license and all associated endorsements is warranted.

**Findings of Fact**

1. Mr. McGarry became a licensed educator in 2003, teaching in Kansas City, Missouri, for two years.

2. Thereafter, he had several jobs, but eventually returned to teaching.

3. Mr. McGarry currently holds a professional teaching license and an initial school leadership license. He has been continuously licensed in Kansas since 2012.

4. On June 27, 2015, Mr. McGarry was ticketed for DUI, Refusal of Preliminary Breath Test, Possession of Drug Paraphernalia, and Possession of Controlled Substances in the City of Merriam, Kansas.

5. On September 17, 2015, Mr. McGarry entered into a diversion agreement in the Municipal Court of the City of Merriam wherein he stipulated to the charges and the facts as contained in the complaint, police reports, written, oral, or visual recorded
witness statements, and videos. He further stipulated he was the individual arrested and charged.

6. Mr. McGarry was placed on diversion for 12 months.

7. On October 22, 2015, the KSDE filed the Complaint at issue.

8. Mr. McGarry timely requested a hearing in this matter.

9. As previously stated Mr. McGarry and his counsel appeared and the Commission heard testimony.

10. At the time, Mr. McGarry had not completed his diversion.

11. When questioned as to his use of marijuana, Mr. McGarry stated that he began using marijuana in 1999 and continued using marijuana until June 2015. He stated that he used marijuana for insomnia and would also occasionally use marijuana for recreational purposes.

12. When asked where he got the marijuana, Mr. McGarry stated that he played soccer and ran trails and would just “ask around.”

13. When asked, he also testified that he was still in contact with the people from whom he had obtained the marijuana.

14. There was also testimony by Mr. McGarry indicating that he kept the marijuana and pipe in his car during times when it would have been parked on school property.

15. Mr. McGarry specifically testified that he had not used marijuana since the incident giving rise to his diversion in June 2015.
16. The crux of Mr. McGarry’s argument was that he had an unblemished teaching record and that suspension would create a hardship on his family and do a disservice to his students. He also claimed that the incident giving rise to his diversion was “one night of poor judgment.”

17. Based on Mr. McGarry’s testimony, the Commission took the matter under advisement and continued Mr. McGarry’s hearing to the first hearing/meeting date after the date of completion of his diversion. To confirm that Mr. McGarry was still not using marijuana as he had testified and to assure that he would not do so during this time period, the Commission ordered two hair follicle drug tests.

18. Mr. McGarry declined to take the first hair follicle drug test as required by the Commission.

Conclusions of Law and Discussion

1. The Board may suspend a license for misconduct or other just cause including entry into a diversion agreement after having been charged with drug-related conduct. K.A.R. 91-22-1a.

2. Mr. McGarry was not convicted of a misdemeanor involving drugs, however, entered into a diversion agreement for DUI, refusal of preliminary breath test, and possession of marijuana and drug paraphernalia. Successful completion of the agreement will result in dismissal of the charges.

3. The Commission, accepting Mr. McGarry’s testimony that he was no longer using marijuana, continued Mr. McGarry’s hearing to a date after the date his
diversion would be completed with the condition that he submit to the two hair follicle
drug tests.

4. As previously stated, Mr. McGarry declined to submit to the first drug test. By doing so, the only conclusion that can be drawn by the Commission is that Mr. McGarry provided false testimony regarding when he last used marijuana.

5. While Mr. McGarry expressed his remorse for his behavior and recognition of the wrongfulness of his conduct, the Board is not now convinced of the truthfulness of such statements.

6. In addition, the Commission is also troubled by the fact that it appeared that Mr. McGarry kept marijuana and drug paraphernalia in the glove box of his car while his car was parked on school grounds.

7. The Commission finds that Mr. McGarry cannot be in a position of public trust as a teacher based on the following. First, Mr. McGarry's behavior, i.e., possessing and using marijuana, appears to not have ceased. Second, Mr. McGarry failed to provide truthful responses to the questions asked by the Commission about his continued marijuana use.

8. The Commission finds that Mr. McGarry's conduct is inconsistent with the commonly-held perceptions and expectations of a member of the teaching profession.

9. On a unanimous vote of 7-0, the Commission finds Mr. McGarry is not fit to be a member of the teaching profession.
IT IS THEREFORE RECOMMENDED by the Professional Practices Commission to the Kansas State Board of Education that Gage McGarry's voluntary surrender of his teaching license not be accepted and that his license and all associated endorsements be revoked.

This Initial Order of the Professional Practices Commission is not a Final Order and is required to be reviewed by the Kansas State Board of Education in accordance with the provisions of the Kansas Administrative Procedure Act.

The licensee may submit to the Kansas State Board of Education for its consideration as a part of its review of the Initial Order, a written brief citing legal authority as to why the above recommendation should not be accepted. The legal brief must be filed with the Secretary of the Professional Practices Commission, Kansas State Department of Education, 900 SW Jackson Street, Topeka, Kansas 66612, within fifteen days after service of the Initial Order for transmittal to the Kansas State Board of Education.

This Initial Order is made and entered this _11_ day of May, 2016.

Linda Sieck, Chairperson
Professional Practices Commission
CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2016, a true and correct copy of the
above and foregoing was filed with the Secretary for the Kansas State Board of Education and
one (1) copy was mailed by certified mail, return receipt requested, to:

Gage McGarry
7113 Aminda Dr.
Shawnee, Kansas 66086

Ted Lickteig
Attorney for Respondent
Greystone Office Plaza, Ste. 112
12760 W. 87th Street
Lenexa, Kansas 66215

and via interoffice mail to:

Kelli Broers
Assistant General Counsel, Kansas State Department of Education
900 SW Jackson Street, Ste. 102
Topeka, Kansas 66612

[Signature]
Gwen Kramer
Secretary, Professional Practices Commission
BEFORE THE KANSAS STATE BOARD OF EDUCATION

In the Matter of the License of
GAGE McGARRY

Case No. 15-PPC-52
OAH No. 16ED0012

BRIEF OF LICENSEE REGARDING INITIAL ORDER

The license holder, Gage McGarry, by and through counsel, Theodore J. Lickteig, submits the following brief regarding the Initial Order of the Professional Practices Commission dated May 11, 2016.

I. Introduction.

The Initial Order of the PPC was based on speculation, conjecture, inferences not supported by facts and placed reliance on a drug test method that has drawn criticism in the professional literature.

II. Statements in Initial Order.

1. The PPC ordered Mr. McGarry to submit to two hair follicle tests at different points in time. (Initial Order at 1)

2. “There was also testimony by Mr. McGarry indicating that he kept the marijuana and pipe in his car during times when it would have been parked on school property.” (Initial Order, Para. 14 at 4)

3. “Mr. McGarry specifically testified that he had not used marijuana since the incident giving rise to his diversion in June 2015.” (Initial Order, Para. 15 at 4)

4. “Mr. McGarry declined to take the first hair follicle drug test as required by the Commission.” (Initial Order, Para. 18 at 5)

5. “As previously stated, Mr. McGarry declined to submit to the first
drug test. By doing so, the only conclusion that can be drawn by the Commission is that Mr. McGarry provided false testimony regarding when he last used marijuana.” (Initial Order, Para. 4 at 6)

6. “While Mr. McGarry expressed his remorse for his behavior and recognition of the wrongfulness of his conduct, the Board is not now convinced of the truthfulness of such statements.” (Initial Order, Para. 5 at 6)

7. “In addition, the Commission is also troubled by the fact that it appeared that Mr. McGarry kept marijuana and drug paraphernalia in the glove box of his car while his car was parked on school grounds.” (Initial Order, Para. 6 at 6)

8. “The Commission finds that Mr. McGarry cannot be in a position of public trust as a teacher based on the following. First, Mr. McGarry’s behavior, i.e., possessing and using marijuana appears not to have ceased. Second, Mr. McGarry failed to provide truthful responses to the questions asked by the Commission about his continued marijuana use.” (Initial Order, Para. 7 at 6)

III. Legal Standards.

1. Review Standards.

In Kansas, any action taken by a state agency, such as this Board, may not be based on a lack of proof by evidence that is substantial when viewed in light of the record as a whole. K.S.A. 77-621(c)(7). Also, any agency action may not be unreasonable, arbitrary or capricious. K.S.A. 77-621(c)(8).

2. Evidentiary Standards.

“ ‘Circumstantial evidence’ is evidence that tends to prove a fact in issue by
proving other events or circumstances which, according to common experience of people, usually or always are attended by the fact in issue and, therefore, affords a basis for a reasonable inference by a jury or court of the occurrence of the fact in issue.” Barbara, Kansas Law and Practice: Lawyer’s Guide to Kansas Evidence, 5th ed, §1.16, p. 50 (2013).

“An ‘inference’ is not in itself evidence, but is the result of a reasoning process by which a fact is found to exist by making a deduction of its existence that is logically and reasonably drawn from another fact or set of facts established by the evidence.” Id at 49.

Evidentiary problems with inferences arise particularly when more than one inference is made from a fact that is found to exist. Aylett v. Secretary of Housing and Urban Development, 54 F.3d 1560 (10th Cir. 1995) (possibility, rather than probability, derived from chain of successive inferences about renting practices not adequately supported); State v. Bornholdt, 261 Kan. 644, 932 P.2d 964 (1997) (introduction into evidence of drug paraphernalia seized ten days after alleged murder was erroneous; link between the seizure and alleged murder was too tenuous and remote in time); See also, United States v. Summers, 414 F.3d 1287 (10th Cir. 2005) (discussing inference-on-inference rule)

Substantial evidence is evidence which possesses both relevance and substance and which furnishes a substantial basis of fact from which the issues can reasonably be resolved. State v. Ralston, 43 Kan.App.2d 353, 225 P.3d 741 (2010).

IV. Testimonial Evidence.

The PPC ordered Mr. McGarry to submit himself to two hair follicle tests. (SOF
1) Mr. McGarry declined to take the first test. (SOF 4) From this, the PPC inferred that Mr. McGarry provided false testimony regarding when he last used marijuana (SOF 5).

Simply put, the PPC’s inference from the fact of Mr. McGarry’s test refusal that he provided false testimony is unwarranted and improper. His testimony was that he last used marijuana in June of 2015. (SOF 3) Mr. McGarry’s concern was that a hair follicle test, unlike a urinalysis, reveals ingestion of substances up to a year prior to the test date. Another concern was about the unreliability of hair follicle tests. His counsel requested that Mr. McGarry be allowed to submit a urinalysis instead of a hair follicle test at the conclusion of the March 29, 2016 hearing, but that request was denied.

A second improper inference by the PPC concerned possession of marijuana on school property. (SOF 2) There was an extended exchange between Commissioners and Mr. McGarry on this point during the March 29, 2016 hearing. (Ex. 1) The exchange included ambiguous and compound questions that resulted in ambiguous answers. The exchange concluded, however, with clarity. Mr. McGarry stated that any possession in his car was not “during school time.” Thus, he could not have possessed it on school property.

The improper inferences continued in the hearing on April 25, 2016.1 One Commissioner inferred that a breathalyzer was somehow connected with possession of “drugs that he had on school grounds, if I remember correctly.” (Ex. 1) It is unclear what the Commissioner was trying to recollect but there is nothing in evidence connecting a breathalyzer test with possession of “drugs” on school grounds.

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1 Although secondary to the issues raised in this brief, counsel for the Department stated that Mr. McGarry had requested that he be allowed to submit a voluntary surrender for the Commission’s consideration effective at the end of the school year so he could complete the school year. That was not an accurate representation of Mr. McGarry’s position at the time.
In the same hearing, another Commissioner offered sheer speculation by saying that Mr. McGarry could have had marijuana in his glove compartment for several weeks or longer. She questioned his credibility on that basis. That Board should disregard that comment as having absolutely zero basis in fact.

It is clear that all of these inferences drove the PPC to recommend the refusal to accept Mr. McGarry’s voluntary surrender of his licenses and to recommend revocation.

The inferences were based on circumstantial evidence that was not substantial. The PPC’s actions were also arbitrary and unreasonable.

V. Hair Follicle Testing.

The Licensee notes the attached scientific literature regarding the unreliability of hair follicle tests.

1. A report from medicaldaily.com posted October 9, 2015. (Ex. 2) The report notes that cannabis can appear in hair follicle tests of a non-consuming person through hand contact, sweat or smoke. The report notes that for federal government employees only urine-based samples have been certified.

2. A study posted at nature.com on May 11, 2015. (Ex. 3) In its conclusion, the study notes that hair follicle tests might lead to false conclusions and cautions against their use.

Respectfully submitted,

[Signature]

Theodore J. Lickteig
Kan. Bar No. 12977
Law Offices of Theodore J. Lickteig

5
CERTIFICATE OF SERVICE

I, Theodore J. Lickteig, hereby certify that I hand-delivered the above and foregoing this 10th day of June, 2016 to:

Gwen Kramer
Secretary, Professional Practices Commission
Kansas State Department of Education
900 S.W. Jackson Street
Topeka, Kansas 66612-1182

And mailed the above and foregoing first-class postage prepaid on the same date to:

Kelli Broers
Assistant General Counsel
Kansas State Department of Education
900 SW Jackson Street, Suite 102
Topeka, Kansas 66612

[Signature]

Theodore J. Lickteig
EXHIBIT

1
1:38:47-1:41:30

By Commissioner Burgess: "Uh, earlier we were talking about Board policy if I recall and you were, you were stating that the Board policy as far as to reporting to your, uh your your acting supervisor, your principal or assistant principal that if you were convicted, are you aware of board policy, uh regarding having an illegal substance, uh, on, uh, school property?"

By Gage McGarry: "No."

By Commissioner Burgess: "For instance, uh, if if you were to drive onto your school property, and and you had maybe not even an illegal substance, let's say it's a legal and you had a case of beer in the back seat of your vehicle would that, uh, be construed based on your understanding of Board policy, uh, would that construed as acceptable behavior for a teacher?"

By Gage McGarry: "No, absolutely not."

By Commissioner Burgess: "Uh and that is because, why would that not be acceptable?"

By Gage McGarry: "Because it's illegal and"

By Commissioner Burgess: "Uh wait a case of beer in your backseat."

By Gage McGarry: "I mean that is legal, but that is not legal on school property."

By Commissioner Burgess: "Ok, that's that's what I was clarifying, but you did have this this glass jar, uh in your vehicle and you're not sure how long that had been there, correct?"
By Gage McGarry: “Correct. I mean it could have been the beginning of June, I’m not really sure, I’m not really sure, like I said the last time I smoked marijuana was around the beginning of June, so it could have very well been around then is the last time I had it or I put it in my car.”

By Commissioner Burgess: “Oh ok, I just wasn’t sure maybe had been there for, I I just wasn’t aware of that.”

By Commissioner Nicks: “Can I speak to the defendant please?”

By Commissioner Burgess: “Uh, yes go ahead.”

By Commissioner Nicks: “Um, so as you’re stating that though you’re you’re unsure if that’s when it was in there so it is, it is you know though as far as I I understand all schools Kansas are drug free zones but it is so it is possible or probable that that you had you know you are carrying around a drug paraphernalia and and marijuana in your car during the end of could have been in May sometime during during the school day, is is that correct?”

By Gage McGarry: “That is correct, but I highly doubt that was the case because I like I said around the last time I smoked marijuana was in around June and that would have not been during school time, but I don’t know exactly when June that would have been in my car is what I was saying like I don’t know when exactly that it was in my car, but it would have not been during school time.”
00:30

By Prosecutor Broers: "So those of you that weren't here March 29th, um, Mr. McGarry appeared with counsel and a full evidentiary hearing was held. The, um, agency had requested that Mr. McGarry's license be suspended until he completed diversion for a misdemeanor possession and misdemeanor DUI charge in the City of Merriam. At the conclusion of that hearing, uh one of the Commission's orders was that Mr. McGarry submit to a hair follicle drug test within 7 days, uh Mr. McGarry did not do that upon further discussion with his attorney, um Mr. McGarry first requested that he be allowed to submit a voluntary surrender for your consideration effective the end of the school year so he could complete the school year, um didn't receive that, a we had a status conference this past Monday, so a week ago today and, um Mr. McGarry's attorney, um represented that his client was just going to submit a voluntary surrender and ask that the Commission recommend that just be accepted without any discipline and so that's what we, um I have distributed to you, ah supplemental materials this came in Friday, um a letter from Mr. Lickteig, who was Mr. McGarry's attorney requesting that the Commission, I should note also that we received an email from um Mr. Lickteig late Friday or early this morning saying he was neither he nor his client were going to be appearing today, so that's why we're taking this up now instead of 11 o'clock. Uh but he's just asking that is voluntary surrender be accepted and that there be no additional punishment, um noted. So um."
13:06

By Commissioner Nicks: "If I if I remember correctly and I believe I do, uh, he refused to take a breathalyzer, um at the scene, um, which was one of the reasons he was, one of the reasons he was here um more so because of the drugs that he had on school grounds, if I remember correctly."

By Commissioner Sieck: "And the comment he used it to help him sleep but it had been in his glove compartment, he hadn't for all he knew it could have been there for several weeks or longer, so that calls into question that whole part of his testimony."
EXHIBIT 2
Hair Follicle Drug Tests Can Lead To A False Positive, Thanks To Secondhand Traces Of Marijuana

Oct 9, 2015 04:34 PM By Susan Scotti

Hair strand drug tests detect the presence of drug metabolites in the follicle. While any discovery of metabolites in hair tests is believed to be undeniable proof of marijuana use, a new study from the Institute of Forensic Medicine in Freiburg, Germany finds that it's possible to get a false positive.

“Our studies show that [the main targets in a hair test] can be present in hair of non-consuming individuals because of transfer through cannabis consumers, via their hands, their sebum/sweat, or cannabis smoke,” wrote Dr. Volker Auwärter, a professor of forensic toxicology, and his colleagues. Worldwide, cannabis is preferred above all other illicit drugs, with an estimated 125 to 227 million users around the globe, the researchers noted. Nearly as popular are drug tests, which commonly focus on urine, sweat, saliva, or hair to detect the presence of this and other illegal substances.

Employee drug testing and child protection drug testing often rely on hair analysis, noted the Germany-based researchers in their study. Though sometimes hair tests are used in the United States, the American Association for Clinical Chemistry suggests that urine tests are the most frequently used drug screens.

In fact, for government employees in the U.S., urine tests are standard. Spokesperson for Substance Abuse and Mental Health Services Administration (SAMHSA) Bradford Stone, of the department of Health and Human Services, told Medical Daily that “the only method we have certified for use is urine-based.” Stone explained SAMHSA provides the guidelines for drug tests of federal employees, other government agency employees, and industry employees who work on government contracts.

And, based on published data from Quest Diagnostics, which provides diagnostic testing information services in the U.S. and internationally, private industries also appear to favor urine tests. The Quest Diagnostics Drug Testing Index estimated that the company performed more than 210 thousand hair drug tests, more than 800 thousand oral fluid
drug tests, and more than 6.6 million urine tests for the general U.S. workforce during 2014. Additionally, the company conducted more than 2.5 million federally mandated urine tests for safety sensitive workforce. This same year false positives may have occurred, at the very least, on 210 thousand drug test occasions. This figure, though, does not include child custody cases.

A false positive for an employee or a parent could have "a devastating impact on someone's life," Kris Krane, a managing partner at 4front Advisors and former executive director of Students for Sensible Drug Policy, told Medical Daily. A positive test result can nullify a workers' compensation claim or even put death benefits at risk should a worker be killed on the job.

"These days urine tests are used mostly as a precursor to employment, random drug testing is less common," Krane observed. However, in child custody cases, drug tests are "a common tactic," he noted, explaining how a positive result could lead to court-supervised visits or no custody rights whatsoever, depending on a state's specific legal standard.

The problem with drug tests in general, said Krane, is they may not be effective at determining impairment given marijuana stays in your system longer than other drugs. Someone could have used months ago and it would show up on a hair test, he said.

Meanwhile, the website of the National Institute on Drug Abuse offers the viewpoint of employers. Compared with non-substance users, past research indicates substance-using employees are more likely to change jobs frequently, be late to or absent from work, be less productive, be involved in a workplace accident and potentially harm others, and even file a workers' compensation claim.

No matter where someone stands on drug testing, the current study suggests a positive hair test result could be due to close contact with cannabis consumers.

"Practitioners who work with results of hair analysis should be aware of these limitations and the severe consequences false conclusions could entail," the authors concluded.

EXHIBIT

3
Finding cannabinoids in hair does not prove cannabis consumption

Bjoern Moosmann, Nadine Roth & Volker Auwärter

Hair analysis for cannabinoids is extensively applied in workplace drug testing and in child protection cases, although valid data on incorporation of the main analytical targets, Δ9-tetrahydrocannabinol (THC) and 11-nor-9-carboxy-THC (THC-COOH), into human hair is widely missing. Furthermore, Δ9-tetrahydrocannabinolic acid A (THCA-A), the biogenetic precursor of THC, is found in the hair of persons who solely handled cannabis material. In the light of the serious consequences of positive test results the mechanisms of drug incorporation into hair urgently need scientific evaluation. Here we show that neither THC nor THCA-A are incorporated into human hair in relevant amounts after systemic uptake. THC-COOH, which is considered an incontestable proof of THC uptake according to the current scientific doctrine, was found in hair, but was also present in older hair segments, which already grew before the oral THC intake and in sebump/sweat samples. Our studies show that all three cannabinoids can be present in hair of non-consuming individuals because of transfer through cannabis consumers, via their hands, their sebum/sweat, or cannabis smoke. This is of concern for e.g. child-custody cases as cannabinoid findings in a child’s hair may be caused by close contact to cannabis consumers rather than by inhalation of side-stream smoke.

Among illicit drugs cannabis is still the drug showing the highest prevalence, with an estimated 125–227 million consumers worldwide. In hair analysis, the two main targets for cannabinoid analysis are the psychoactive Δ9-tetrahydrocannabinol (THC) and its metabolite 11-nor-9-carboxy-Δ9-tetrahydrocannabinol (THC-COOH). Typical models for incorporation of drugs into hair include passive diffusion from blood capillaries into matrix cells at the basement membrane of the hair follicle and diffusion from sweat or sebum into the completed hair shaft, but also the possibility of external contamination is an issue. While presence of THC-COOH, which is only formed inside the body, is considered a proof of ingestion/contamination according to the current scientific doctrine when detected in hair, analysis for THC alone is still common laboratory practice, because THC-COOH hair concentrations are extremely low and afford the use of expensive instrumentation. However, due to THC being present in cannabis smoke, there is a high probability of biased results caused by external contamination of the hair, and the mechanism of incorporation for THC-COOH is still unknown.

Recently, in addition to THC, relatively high Δ9-tetrahydrocannabinolic acid A (THCA-A) concentrations were detected in forensic hair samples. THCA-A is the non-psychoactive biosynthetic precursor of THC and the main cannabinoid in fresh cannabis plant material. When heated, e.g. during smoking or baking, THCA-A is decarboxylated yielding THC (Fig. 1). As relevant incorporation through the bloodstream could not be verified in previous investigations, the major part of this cannabinoid seems to originate from handling of cannabis material and subsequent transfer to the hair. Furthermore, the chemical instability of THCA-A entails the risk of artifactualy elevating the THC concentration during the analytical process, potentially leading to false positive findings.

In this article, two studies are described in order to elucidate the main routes of incorporation for THC, THC-COOH and THCA-A into human hair and to provide a valid basis for correct interpretation of hair analysis results.
Results

Oral intake of THCA-A. To definitely exclude a relevant incorporation of THCA-A into hair via blood, sebum or sweat, a volunteer ingested 50 mg THCA-A daily over a 30 day period (c_{max} of THCA-A in serum was 2,120 ng/ml; oral bioavailability of THCA-A: approximately 41%)\(^3\). Despite a relatively high dose of 50 mg THCA-A per day (a heavy cannabis user may take up doses of several hundred mg of total THC daily, and the proportion of THCA-A in cannabis smoke was found to be less than 1% by weight\(^4\), no THCA-A could be detected in any of the segmented hair samples obtained during the study. In accordance with the hair analysis results, no THCA-A could be detected in any of the sebum/sweat samples either.

Oral intake of dronabinol. In a second study, consisting of repeated oral intake of dronabinol (THC) by two volunteers over a 30 day period (2.5 mg, three times per day), the extent of THC incorporation via the bloodstream into hair was evaluated. No THC was detected at any time of sampling in all the head hair, beard hair or body hair samples (limit of detection: 1 pg/mg). From multiple serum samples taken within 8 hours (dosing interval) the estimated AUC_{oral} (THC) of the two participants ranged from 740–1,300 μg/L\(\cdot\)min (n = 3 for each participant). Maximum serum concentrations of THC-COOH were 18 ng/mL (participant 1) and 40 ng/mL (participant 2), respectively (see Supplementary Tables S3 and S4 online). Considering the individual head hair growth rates (1.3 cm per month for both participants), THC-COOH was also detected in segments correlating to a time period located up to 2.3–3.1 months before the start of the THC intake (Fig. 2; Participant 2 showed THC-COOH positive results up to the segment 5–6 cm collected six weeks after the first intake, for participant 1 the most distant positive segment was 2–3 cm corresponding to maximum 3–4 weeks before start of THC intake; for full data see Supplementary Table S1 online). Analysing sebum/sweat samples of both participants revealed THC-COOH amounts of 4.3 to 82 pg/cm\(^2\) per day (Table 1). Analysis of hair samples from alternative sampling sites tended to show relatively high concentrations in beard, pubic and axillary hair (see Supplementary Table S2 online). In beard hair samples, THC-COOH could be detected up to 11 weeks after the last THC intake (Fig. 3).

Discussion
The results strongly suggest that THCA-A is not incorporated into hair through the bloodstream or via sebum/sweat to a relevant extent. Although this was tested only in one individual, the daily dose
Figure 2. Distribution of THC-COOH along the hair shaft after dронabinol intake. 11-nor-9-carboxy-Δ9-tetrahydrocannabinol (THC-COOH) concentrations determined in the segmented head hair samples of two study participants obtained two weeks after the last intake of dронabinol (3 × 2.5 mg daily for 30 days).

of THCA-A was at least an order of magnitude higher than expected in excessive cannabis smokers. Therefore, the THCA-A detected in forensic hair samples (concentration range in hair samples of cannabis consumers: 46–4,700 pg/mg\(^{13}\)) can only be explained by external contamination via handling of cannabis material\(^{15}\).

The incorporation rate of THC via the bloodstream into the hair seems to be negligible low as no THC could be detected in the hair samples of the participants after systemic dронabinol uptake. It follows from Fick's law that the amount of analyte incorporated into hair should be proportional to the area under the analyte serum concentration over time curve (AUC). Given that the THC AUC\(_{0-24h}\) of the two participants was only less than five times lower than the AUC range found in the literature for occasional cannabis smokers after a single consumption (780–6,390 μg/L·min\(^{19,20}\)), it is obvious that also no relevant incorporation through the bloodstream into hair is expected to occur in cannabis users, and THC detected in forensic hair samples does originate from external sources. To reach THC concentrations of 50 pg/mg (cut-off recommended by the Society of Hair Testing\(^{21}\)) through incorporation via the bloodstream would require consumption of extremely high amounts of THC, which would certainly be associated with a several-fold higher amount of THC incorporated through contamination routes (cannabis smoke exposition and/or transfer by contaminated fingers). Consequently, THC findings in hair cannot be regarded as a proof of cannabis consumption. At the same time, oral uptake of THC or cannabis products does not necessarily lead to positive THC hair findings, which can be of interest in abstinence control.

Furthermore, the detection of THC-COOH in hair segments did not correlate to the period of THC intake and the presence of THC-COOH in sebum/sweat implicates a relevant contribution to the THC-COOH findings in hair samples by diffusion of the analyte from sebum into the hair matrix. The marked variations in the THC-COOH concentrations between body regions may be explained by differences in the physiology (e.g. presence of apocrine sweat glands in the axillary and pubic region), sampling particularities (e.g. regular shaving of beard hair vs. sampling of hair strands) and a possible transfer of the analyte due to contamination of hair with urine (pubic region). The fact, that THC-COOH was detectable up to 11 weeks past the intake period in beard hair further underlines a relevant incorporation via secretion of sebum which shows a physiological time shift, or by diffusion from surrounding tissues\(^{2}\).

At first glance, differentiation of the route of THC-COOH incorporation into hair seems irrelevant as long as positive THC-COOH findings in hair require THC uptake by the individual under investigation. However, considering the presence of THC-COOH in sebum/sweat, a transfer to other persons' hair is possible. This is particularly true for young children or partners of cannabis consumers (close body contact, sleeping on the same pillow etc.). Comparing the maximum serum THC-COOH concentrations detected in persons massively exposed to cannabis smoke in a 'coffee shop' (0.5–1.7 ng/mL\(^{22}\)) to the maximum serum concentrations determined in our study (18 and 40 ng/mL), it seems very unlikely that passive smoke exposition can lead to similar THC-COOH concentrations in hair as chronic active consumption does. However, THC-COOH can be detected in hair of young children (age: <2 years)\(^{23}\) in concentrations similar to the concentrations detected in the hair after oral dронabinol intake. Therefore, it seems much more plausible that THC-COOH is transferred to the children's hair by close contact to the cannabis consumers in the family context rather than by systemic uptake after exposition to cannabis smoke.
<table>
<thead>
<tr>
<th>Sample Date</th>
<th>THC-COOH 1/3 mg</th>
<th>THC-COOH 2/6 mg</th>
<th>THC-COOH 3/12 mg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day 0</td>
<td>n.d.</td>
<td>Day 0</td>
<td>n.d.</td>
</tr>
<tr>
<td>Day 3/4</td>
<td>56</td>
<td>Day 1/2</td>
<td>58</td>
</tr>
<tr>
<td>Day 6/7</td>
<td>19</td>
<td>Day 2/3</td>
<td>69</td>
</tr>
<tr>
<td>Day 9/10</td>
<td>13</td>
<td>Day 5/6</td>
<td>47</td>
</tr>
<tr>
<td>Day 10/11</td>
<td>4.5</td>
<td>Day 7/8</td>
<td>41</td>
</tr>
<tr>
<td>Day 12/23</td>
<td>6.9</td>
<td>Day 8/9</td>
<td>82</td>
</tr>
<tr>
<td>Day 15/27</td>
<td>6.2</td>
<td>Day 10/11</td>
<td>31</td>
</tr>
<tr>
<td>Day 27/31</td>
<td>8.0</td>
<td>Day 13/14</td>
<td>57</td>
</tr>
<tr>
<td>Day 30/31/1</td>
<td>5.6</td>
<td>Day 21/22</td>
<td>42</td>
</tr>
<tr>
<td>1 day after last intake</td>
<td>7.2</td>
<td>Day 30/31</td>
<td>36</td>
</tr>
<tr>
<td>2 days after last intake</td>
<td>4.3</td>
<td>5 days after last intake</td>
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</tr>
<tr>
<td>3 days after last intake</td>
<td>7.2</td>
<td>6 days after last intake</td>
<td>62</td>
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<td>5 days after last intake</td>
<td>n.d.</td>
<td>7 days after last intake</td>
<td>32</td>
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<td>15</td>
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<td>15 days after last intake</td>
<td>25</td>
<td>25 days after last intake</td>
<td>46</td>
</tr>
<tr>
<td>18 days after last intake</td>
<td>n.d.</td>
<td>27 days after last intake</td>
<td>n.d.</td>
</tr>
</tbody>
</table>

Table 1. THC-COOH concentrations in sebum/sweat samples. 11-nor-9-carboxy-Δ9-tetrahydrocannabinol (THC-COOH) concentrations determined in the sebum/sweat samples of the participants collected prior to the dronabinol intake period (3 x 2.5 mg daily for 30 days), and then on a regular basis until several weeks after the last intake. The samples were collected by using Sebutape® patches which were placed on the forehead overnight. n.d.: not detected (limit of detection 0.9 pg/cm²). Sebum/sweat concentration were normalised to day intervals for better comparability.

Limitations of the study. For the oral intake of THCA-A only one individual was tested. Although the extraordinary high serum concentrations reached should compensate for this, physiological characteristics of the individual may have led to THCA-A not being incorporated into hair to a measurable extent. In the study with oral intake of dronabinol a relatively low dose of THC was used, which may reflect THC uptake of moderate cannabis smokers, but not of heavy users. Therefore, measurable incorporation of THC from the blood stream cannot be excluded in the case of heavy cannabis smoking. Due to oral administration (slow resorption, first-pass effect) the maximum THC serum concentrations were lower than the maximum concentrations generally reached after smoking. Although – following from Fick’s law – incorporation should be proportional to the AUC, the diffusion coefficient may vary with the gradient. High concentration gradients as observed directly after smoking might therefore lead to a more efficient incorporation of THC. Furthermore, the number of individuals tested in this study was low (n = 2) and pharmacokinetic particularities may affect the generalizability of the findings.

Conclusions
Knowing the main routes of cannabinoid incorporation into human hair, any interpretation of varying concentrations along the hair shaft in terms of time-resolved patterns of use may lead to false conclusions. Cases with high THC or THC-COOH concentrations in proximal hair segments are in particular critical as they may be interpreted as a recent increase of cannabis consumption. Not over-interpreting THC or THC-COOH findings in hair is of utmost importance in child protection cases, but also in the context of work place drug testing and any forensic application. Practitioners who work with results of hair analysis should be aware of these limitations and the severe consequences false conclusions could entail.

Although the results of our study cannot be transferred directly to other cannabinoids or other types of illicit drugs (in particular to less lipophilic and non-acidic compounds) the proportion of drugs incorporated into hair via the bloodstream is largely unknown and should be the focus of further research.
Figure 3. THC-COOH concentration in beard hair after dronabinol intake. 11-nor-9-carboxy-Δ9-tetrahydrocannabinol (THC-COOH) concentrations determined in the beard hair samples of two study participants before and after the intake of dronabinol (3 × 2.5 mg daily for 30 days). *For participant 1 only one sample was obtained covering weeks 8–10.

Methods

Ethical approval. The study protocol was approved by the Ethics Committee of the University of Freiburg, Germany (EK-Freiburg 98/14), and the Federal Opium Agency (BfArM, Bonn, Germany) granted a permit for the intake of dronabinol. The study was registered in a World Health Organization primary register (German Clinical Trials Register; DRKS00006148, registered: 8th May 2014), and was conducted at the Institute of Forensic Medicine Freiburg, Germany, in accordance with the Declaration of Helsinki Principles and subsequent amendments. Written informed consent was obtained from each participant. Volunteers were recruited from the personal environment of the authors and affirmed that they neither consumed cannabis nor were exposed to cannabis via peers or family members prior to and during the study.

Oral intake of THCA-A. One male volunteer orally ingested 50 mg THCA-A daily over a 30 day period. Hair samples (head, chest, pubic, axillary and leg hair) were collected prior to the intake period, and then on a weekly basis until three weeks after the last intake. The segmented hair samples (1 cm segments) were analysed for THCA-A applying a fully validated LC-MS/MS method(4). See Supplementary Material for details.

Oral intake of dronabinol. Two male participants orally ingested 2.5 mg dronabinol (THC) three times daily over a 30 day period. Hair samples (head, beard and body hair) were collected prior to the intake period, and then on a regular basis until several weeks after the fast intake. Apart from hair samples, combined sebum/sweat samples were collected using Sebatapes(5). All hair samples were analysed for THC and THC-COOH after alkaline hydrolysis applying a fully validated LC-MS method on a Shimadzu Nexera 2 UHPLC coupled to an ABSciex QTRAP 5500 linear ion-trap mass spectrometer. See Supplementary Material for details.

References


Acknowledgements

We are grateful for helpful comments and discussion to Leslie King (retired, Basingstoke, UK), Fritz Pragt (Institute of Legal Medicine, Charité-University Medicine Berlin, Germany), Annette Thierauf-Emberger and Stefan Pollak (both Institute of Forensic Medicine Freiburg, Germany).

Author Contributions

V.A. and B.M. conceived and supervised the projects. B.M. and N.R. performed all experiments and analysed the data. All authors wrote the manuscript together and approved the final manuscript.

Additional Information

Supplementary Information accompanies this paper at http://www.nature.com/srep

Competing financial interests: The authors declare no competing financial interests.

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BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of the License of Gage McGarry

Case No. 15-PPC-52
OAH No. 16ED0012

RESPONSE TO BRIEF OF LICENSEE REGARDING INITIAL ORDER

COMES NOW the Kansas State Department of Education (KSDE), by and through its attorney, Kelli M. Broers, and for its Response to Brief of Licensee Regarding Initial Order states:

I. Introduction

This case involves a licensed teacher, Gage McGarry, who was charged with DUI after having driven down a major Johnson County thoroughfare, Shawnee Mission Parkway, on a tire rim. A search of his car produced marijuana and a pipe in the glove compartment. Consequently, he was also charged with possession. The Professional Practices Commission (Commission), after hearing Mr. McGarry’s testimony and reviewing all the evidence, ordered he submit results from two hair follicle tests. Mr. McGarry refused to take the first test. Mr. McGarry declined to appear before the Commission when given another opportunity and submitted a voluntary surrender of his license instead. The Commission recommended the Kansas State Board of Education (State Board) reject Mr. McGarry’s voluntary surrender and revoke his licenses. Mr. McGarry now argues the Commission’s recommendation is not supported by the facts and is arbitrary and capricious. KSDE disagrees. Mr. McGarry’s licenses should be revoked.
II. Facts

1. Mr. McGarry holds a professional teaching license and an initial school leadership license. He has been licensed in Kansas since 2012.

2. On June 27, 2015, Mr. McGarry was ticketed for DUI, Refusal of Preliminary Breath Test, Possession of Drug Paraphernalia, and Possession of Controlled Substances.

3. All of Mr. McGarry’s charges were misdemeanors and he entered into a diversion agreement which, if he meets all the requirements, is scheduled to terminate on September 17, 2016.

4. Based on his entry into a diversion agreement after having been charged with a drug-related crime and the underlying misconduct, Dr. Scott Myers filed a Complaint seeking the suspension of Mr. McGarry’s license until he completed diversion.

5. Mr. McGarry did not inform his employing district of his criminal behavior until months after the Complaint was filed. (See 1:30:00-1:31:00 of March 29, hearing video).

6. An evidentiary hearing was held before the Commission on March 29, 2016, where Mr. McGarry was allowed to present his case.

7. After testimony that Mr. McGarry had been a marijuana user for years, but had not used since June 2015, the Commission continued the hearing and ordered he return after he had successfully completed diversion. There were two conditions placed on Mr. McGarry. He must submit the results of a hair follicle test within 7 days of the March 29th hearing, i.e., April 5th, and results from a second test taken thirty (30) days before he reappeared.

8. Mr. McGarry made no objection to the order.
9. Despite testifying he would submit hair follicle test results if ordered, Mr. McGarry failed to submit results of a hair follicle test by April 5, 2016. (1:29:00 of March 29, hearing video).

10. After numerous attempts to contact Mr. McGarry’s attorney regarding the submission of his hair follicle results, KSDE finally received a response from Mr. McGarry’s attorney on April 12, 2016. Mr. McGarry wished to submit a voluntary surrender of his license in lieu of taking the hair follicle test.

11. Additionally, contrary to the content of footnote 1 in Respondent’s Brief, during the April 12 phone conversation between counsel, KSDE believed Mr. McGarry’s attorney represented his client was concerned the submission of the voluntary surrender would impact his ability to complete the school year. (See KSDE follow-up e-mail, Exhibit 1.)

12. Mr. McGarry submitted a voluntary surrender but asked that no discipline be associated with the surrender. Exhibit 2.

13. The hearing in Mr. McGarry’s case reconvened on April 25, 2016. Neither Mr. McGarry or his attorney attended.

14. After reviewing the evidence again, considering Mr. McGarry’s refusal to submit to a hair follicle test, and reviewing Mr. McGarry’s voluntary surrender, the Commission voted 7 – 0 to recommend to the State Board that Mr. McGarry’s voluntary surrender not be accepted and his licenses be revoked.
III. Argument

a. The Commission’s Recommendation Is Based Upon Substantial Competent Evidence

Mr. McGarry contends the Commission’s recommendation is not based upon substantial competent evidence. He is wrong.

To withstand judicial scrutiny, a State Board action must be based upon substantial competent evidence. K.S.A. 77-621. “Substantial competent evidence is evidence which possesses both relevance and substance and which furnishes a substantial basis of fact from which the issues can reasonably be resolved.” Wiles v. Am. Family Life Assur. Co. of Columbus, 302 Kan. 66, 73 (2015).

There are substantial facts supporting the Commission’s recommendation. Mr. McGarry, while licensed as a teacher, was charged with DUI, Refusal of Preliminary Breath Test, Possession of Drug Paraphernalia, and Possession of Controlled Substances. He received diversion, which he will not complete until September 2016. He failed to report any of this to his employing district until after the complaint in this matter was filed. After a hearing before the Commission, he was ordered to submit to a hair follicle drug test, which he refused to take after having testified he would take the test. Mr. McGarry then tried to circumvent the disciplinary process by submitting a voluntary surrender but requesting that it not reflect any discipline for his conduct.

Mr. McGarry argues some of the Commission’s other findings are based on circumstantial evidence or inferences, and therefore are improper. But both circumstantial evidence and inferences can be a foundation upon which substantial competent evidence is
built. See generally Jones v. Kansas State University, 279 Kan. 128 (2005). Additionally, Mr. McGarry’s own sources verify the legitimacy of circumstantial evidence and inferences. “But a conviction for even the gravest offense may be sustained on circumstantial evidence...[and in civil matters] such evidence need not rise to that degree of certainty that will exclude any and every other reasonable conclusion. It is sufficient that such evidence affords a basis for a reasonable inference by the court or jury of the occurrence of the fact in issue, although some other inference equally reasonable might be drawn from such evidence.” 3 Barbara, Kansas Law and Practice: Lawyer’s Guide to Kansas Evidence, § 1:16, p. 50 (5th ed. 2013), citing State v. Evans, 275 Kan. 95, 105 (2003) and Kuxhausen v. Tillman Partners, L.P., 291 Kan. 314, 241 (2010). Furthermore, the Guide provides, “If an inference drawn from the evidence is a reasonable one the jury has the right to make the inference.” Id. at p. 49, citing State v. Sanders, 263 Kan. 317 (1997). It is also noteworthy that the very definition of evidence states “the means from which inferences may be drawn as a basis for proof...” K.S.A. 60-401. To the extent Mr. McGarry argues circumstantial evidence and inferences cannot be a basis for substantial competent evidence, he is incorrect.

1. The Commission’s inference that Mr. McGarry’s refusal to take the hair follicle test meant he lied about the last time he used marijuana is reasonable and based upon substantial competent evidence.

Mr. McGarry argues the Commission improperly inferred Mr. McGarry lied about the last time he used marijuana because he refused to take the hair follicle test. But Mr. McGarry fails to cite any legal authority for his contention that the Commission’s inference is “unwarranted or improper.” Instead, he offers a belated explanation regarding why he refused to take the hair follicle test—he was concerned about the length of time for which a hair follicle
test reveals ingestion of illegal substances and test reliability. He also notes he requested he be allowed to submit urine analysis results instead.

Mr. McGarry’s position is disingenuous. Not once did he raise any concerns about the hair follicle test to the Commission. In fact, he testified he would take the test if ordered (1:29:00, March 29, hearing video). If he had concerns, he could have addressed the Commission at the March 29 hearing or filed a Motion to Reconsider afterwards. KSDE asks the State Board to disregard all Mr. McGarry’s arguments regarding the validity of hair follicle tests. Those issues should have been raised with the Commission.

That being said, Mr. McGarry’s “concerns” should be debunked, because he has presented the State Board with misleading information.

A. Mr. McGarry is mistaken regarding the length of time for which a hair follicle test will reveal the use of an illegal substance. According to numerous sources, hair follicle tests “lookback” approximately ninety (90) days, depending upon the rate of hair growth.1 Mr. McGarry had short hair. The Commission is aware of the ninety-day lookback because it frequently discusses and orders individuals to submit hair follicle test results. In this case, it specifically ordered the test to determine the veracity of Mr. McGarry’s testimony, i.e., he had last used marijuana in June 2015.

B. Mr. McGarry attacks the reliability of hair follicle tests. In Kansas, hair follicle tests are not only considered reliable, but both the refusal to take a hair follicle test or a

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positive test result can be used to create clear and convincing evidence in support of terminating parental rights. See In re J.A.F., 2015 WL 7192418 (Kan. Ct. App. 2015); In re A.F., 2014 WL 6676225 (Kan. Ct. App. 2014), review denied (Feb. 19, 2015); In re A.M., 2014 WL 6676181 (Kan. Ct. App. 2014); In re C.N., 2013 WL 6726129 (Kan. Ct. App. 2013) (All unpublished opinions are attached hereto as required by 2015 Kan. Ct. R. Annot. 7.04(g)(2)(C)). Until a Kansas court or the Kansas Legislature says otherwise, both the refusal to take a hair follicle test and positive test results are can be evidence.

C. Mr. McGarry testified he would be willing to submit hair follicle test results if so ordered (1:29:00 of March 29, hearing. But at the conclusion of the March 29 hearing, Mr. McGarry’s attorney asked, “Are we permitted to have a urine analysis instead of a hair follicle?” (2:11:30, March 29, hearing video). That is the extent of his request. This is a good opportunity to point out that urine analysis tests only lookback days. Urine analysis tests are ideal for evaluating whether someone has recently used drugs. The hair follicle test, as noted above, is used to determine whether someone has used over a period of months. A urine analysis test would not have served the Commission’s goal of verifying Mr. McGarry’s testimony.

When considering the circumstances, the Commission’s inference that Mr. McGarry’s refusal to take the hair follicle test meant he lied about the last time he used marijuana is reasonable.

2. The Commission’s inference that Mr. McGarry’s testimony indicated he possessed marijuana and a pipe on school grounds is reasonable.

Mr. McGarry next argues that the Commission improperly inferred Mr. McGarry had possessed marijuana and a pipe on school property. The relevant portion of testimony begins at 1:38:00 of the March 29 hearing video. Mr. McGarry first states he doesn’t know how long the marijuana and pipe had been in his car, though, he believed it was the beginning of June 2015. (1:38:00 - 1:40:00, March 29, hearing video.) He then agreed it was possible the marijuana and pipe were in his car on school property during the school year. (1:41:00, March 29, hearing video.) He concluded the exchange by stating he didn’t believe the marijuana and pipe were in his car during school time. (1:41:00 March 29, hearing video).

The Commission’s inference that Mr. McGarry possessed marijuana and a pipe on school grounds is reasonable when one considers Mr. McGarry’s equivocating on the issue, the date of his arrest in relation to the end of the school year, and his long-term drug use. Furthermore, it is a matter of credibility. The Commission decided it did not believe Mr. McGarry’s testimony regarding how long the marijuana had been in his car.

3. Miscellaneous Inference

Mr. McGarry next notes that one of the Commission members inferred a breathalyzer was connected with the drug possession on school grounds. This isn’t accurate. The Commission member notes there were two reasons Mr. McGarry appeared before the Commission: 1. He refused the breathalyzer; and 2. He possessed drugs in his car, which that Commission member believed he had on school grounds. (13:00, April 25, hearing video). As stated above, there is nothing unreasonable about that inference.
b. Reasonable, Arbitrary and Capricious

At the end of Section IV of Mr. McGarry's brief, he notes he believes the Commission's "actions were also arbitrary and unreasonable." Typically, arguments presented without discussion or citation are waived. For the State Board's information, agency action must not be "unreasonable, arbitrary or capricious." K.S.A. 77-621. The test for determining whether an agency action passes muster includes evaluating "whether that particular action should have been taken or is justified, such as [1] the reasonableness of the [agency's] exercise of discretion in reaching the determination, or [2] whether the agency's action was without foundation in fact." Kansas Dep't of Revenue v. Powell, 290 Kan. 564, 569 (2010).

Here, Mr. McGarry was a licensed teacher who entered a diversion agreement after having been charged with drug-related conduct. He also testified to years of marijuana use. And the Commission found it was likely the marijuana and pipe were on school grounds. The Commission, after hearing all the testimony, ordered Mr. McGarry to submit to a hair follicle test, which he refused to take. He then tried to circumvent the disciplinary process by voluntarily surrendering his license and asking that it not reflect additional punishment. (Exhibit 2). The Commission's recommendation that Mr. McGarry's license be revoked is reasonable and well-supported by the facts.

c. Section V of Mr. McGarry's Brief

The State Board should not consider Section V of Mr. McGarry's brief. As noted above, Mr. McGarry never objected to the order that he submit the results of a hair follicle test. He cannot raise the issue now. Additionally, Mr. McGarry has attached one scientific study that calls into question the validity of hair follicle testing. The second source simply reports on that
study. In Kansas, the refusal to take a hair follicle test and positive hair follicle test results are recognized as reliable evidence. For example, they can both be used to create clear and convincing evidence in support of terminating parental rights. See In re J.A.F., 2015 WL 7192418 (Kan. Ct. App. 2015); In re A.F., 2014 WL 6676225 (Kan. Ct. App. 2014), review denied (Feb. 19, 2015); In re A.M., 2014 WL 6676181 (Kan. Ct. App. 2014); In re C.N., 2013 WL 6726129 (Kan. Ct. App. 2013). Mr. McGarry’s complaints regarding the reliability of hair follicle tests are without foundation in Kansas law.

IV. Conclusion

The Commission’s recommendation that Mr. McGarry’s voluntary surrender of his license should not be accepted and his licenses be revoked is supported by substantial competent evidence, is reasonable and neither arbitrary or capricious, and should be adopted by the State Board.

Respectfully submitted,

By: Kelli M. Broers
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Fax: 785-296-7933
kbroers@ksde.org
CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2016, a true and correct copy of the above and foregoing was filed with the Secretary of the Kansas State Board of Education and sent via U.S. Mail to Ted Lickleig, Attorney for Respondent at:

Ted Lickleig
Greystone Office Plaza, Ste. 112
12760 W. 87th Street
Lenexa, Kansas 66215

Kelli M. Broers
Kelli M. Broers

From: Kelli M. Broers
Sent: Tuesday, April 12, 2016 1:30 PM
To: Ted Lickteig
Subject: McGarry

Ted,

Based on our conversation today, can you have your client submit his voluntary surrender in time for the April 25th PPC meeting? Also, can you please confirm when his last day at school will be? We can get this in front of the State Board in May or June.

Thanks,

Kelli

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April 20, 2016

Kelli M. Broers
Attorney
Kansas State Department of Education
900 SW Jackson, Suite 102
Topeka, Kansas 66612

Re: In the Matter of the License of Gage McGarry, No. 15-PPC-52, OAH No. 16 ED 12.

Dear Ms. Broers:

I have enclosed a statement of my client Gage McGarry to effect a voluntary surrender of his education licenses with the State of Kansas.

I have advised Mr. McGarry of the hearing time for this matter of April 25, 2016 at 11 a.m. and of his right to appear at that hearing.

We request that the Kansas reporting system for this matter reflect only that Mr. McGarry has voluntarily surrendered his licenses. Likewise, we request that any reporting to any national reporting system or database be limited to reflect only that he has voluntarily surrendered his licenses.

Any reporting beyond the fact that Mr. McGarry has voluntarily surrendered his licenses will be viewed as an unwarranted additional punishment.

Sincerely,

Ted J. Lickteig

Xc: Gage McGarry
April 20, 2016

I, Gage McGarry, voluntarily surrender my teaching and administrative licenses in the State of Kansas.

Sincerely,

\[
\begin{array}{c}
\text{\underline{\text{\signature}}} \\
\text{Gage McGarry} \\
\text{7113 Aminda Dr.} \\
\text{Shawnee, KS 66227}
\end{array}
\]

VERIFICATION

STATE OF [Kansas] \\
COUNTY OF [Johnson] ss:

BE IT REMEMBERED that on this 20 day of April, 2016, before me, the undersigned, a notary public in and for the county and state aforesaid, came Gage McGarry, who is personally known to me to be the same person who executed the within instrument and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal the day and year last above written.

\[
\begin{array}{c}
\text{\underline{\text{\signature}}} \\
\text{Notary Public}
\end{array}
\]

My appointment expires:

\[
\begin{array}{c}
\text{\underline{December 8, 2018}}
\end{array}
\]
360 P.3d 490 (Table)
Unpublished Disposition
(Pursuant to Kansas Supreme Court Rule 7.04(f),
unpublished opinions are not precedential and
are not favored for citation. They may be cited for
persuasive authority on a material issue not addressed
by a published Kansas appellate court opinion.)
Court of Appeals of Kansas.

In the Interest of J.A.F., H.O., J.O., and T.O.
Nos. 113,813, 113,814, 113,815, 113,816.
| Nov. 13, 2015.
Appeal from Jefferson District Court; Gary L. Nafziger,
Judge.

Attorneys and Law Firms
John R. Kurth, of Kurth Law Office Incorporated, P.A.,
of Atchison, for appellant natural mother.

Bethany J. Lee, assistant county attorney, for appellee.

Before HILL, P.J., PIERRON and POWELL, JJ.

MEMORANDUM OPINION
PER CURIAM.

1 A.F., the natural mother of J.A.F., H.O., J.O.,
and T.O., appeals the district court's termination of
her parental rights. She claims the district court's
determination that she is unfit, that her unfitness is
unlikely to change in the foreseeable future, and that
termination is in the children's best interests was not
supported by sufficient evidence. We disagree and affirm.

FACTUAL AND PROCEDURAL HISTORY
In April 2012, after Mother's boyfriend and the natural
father of H.O. (born in 2008), J.O. (born in 2009), and
T.O. (born in 2010), who were all under the age of 4, was
alleged to have struck and strangled 13-year-old J.A.F.,
the State filed child in need of care (CINC) petitions on
behalf of the four children. The district court appointed a
guardian ad litem and placed the children in the custody of
Social and Rehabilitation Services (now the Department
for Children and Families) but recommended placement
with Mother.

In June 2012, the district court ordered immediate out-
of-home placement for the children after learning that
Mother had tested positive for methamphetamine in
May. In August, Mother entered a no contest plea to
the CINC petitions, and the district court adjudicated
the children as CINCs. That October, the district court
approved a reintegration plan that tasked Mother with:
(1) acquiring safe and stable housing; (2) obtaining and
maintaining legal income sufficient to support her family;
(3) submitting to random urine analysis (UA) tests; (4)
completing RADAC screening; (5) completing parenting
classes; (6) participating in weekly mental health services;
(7) looking for a new place for the family to live; and
(8) abstaining from using any illegal drugs or incurring
new legal charges. In June 2013, J.A.F.'s natural father
relinquished his parental rights.

In June 2014, nearly 2 years after the children had
been adjudicated as CINCs, the district court determined
reintegration was no longer viable and found that
adoption or a permanent guardianship was in the
children's best interests, citing Mother's missed UA tests,
lack of employment, and failure to acquire suitable
housing. Mother was told, however, that the case plan
could be changed back to reintegration if she was
able to: (1) maintain stable, drug-free housing; (2) find
legal employment; (3) speak with her attorney about
termination and relinquishment; (4) maintain contact with
the agency at least twice a month and informing it of
any address or phone number changes; and (5) submit to
random UA tests.

In October 2014, the State filed a motion to terminate
Mother's parental rights, alleging Mother was unfit
because of the use of intoxicating liquor or narcotics; the
existence of physical, mental, or emotional abuse; and a
lack of effort on Mother's part to adjust her circumstances,
conduct, or condition to meet the children's needs. The
State also alleged that the children had been in extended
out-of-home placement because Mother had failed to
maintain regular visitation, contact or communication
with her case manager, failed to complete the tasks of the
parenting plan, and failed to pay a reasonable portion of
the cost of substitute physical care and maintenance based
on ability to pay.
A termination hearing was held October 21, 2014. At the hearing, the natural father of H.O., J.O., and T.O. relinquished his parental rights, which the district court accepted. The hearing was then suspended until December 2, 2014. After listening to the evidence presented and reviewing the parties' documents, the district court found that Mother was unfit and that it was unlikely that her unfitness would change in the future. The district court specifically noted Mother's: (1) failure to adjust her circumstances so that she could provide for the four children; (2) failure to maintain consistent contact with her case managers; (3) missed and failed UA tests; (4) failure to acquire suitable housing and employment; (5) missed visits with the children; and (6) failure to complete reintegration tasks and rehabilitation treatment. The district court also determined that termination was in the children's best interests and terminated Mother's parental rights.

Mother timely appeals.

DID CLEAR AND CONVINCING EVIDENCE SUPPORT THE DISTRICT COURT'S DECISION TO TERMINATE MOTHER'S PARENTAL RIGHTS?

If a child is adjudicated a child in need of care, parental rights may be terminated “when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.”


When reviewing a district court's findings on this point, our standard of review is clear: The district court's findings must be supported by clear and convincing evidence. K.S.A.2014 Supp. 38–2269(a). We determine whether such evidence could have convinced a rational factfinder such facts were highly probable, i.e., by clear and convincing evidence, when viewed in the light most favorable to the State. In re B.D.-Y., 286 Kan. 686, 705, 187 P.3d 594 (2008). In making this determination, we do “not weigh conflicting evidence, pass on credibility of witnesses, or redetermine questions of fact.” 286 Kan. at 705.

1. Mother's unfitness

Mother argues that while the State presented some evidence of her lack of compliance with the reintegration plans, the evidence did not show a complete lack of compliance. She goes on to state that she more consistently complied with the case plan established in July 2014, as was evidenced by her last case manager's testimony that there had been more consistent contact and only a few missed UA tests. Mother also contends that she had acquired approved housing and had completed required and voluntary programs, and the only requirement she lacked was employment.

The State, however, presented evidence that Mother had no contact with her case managers in May 2013 or from March 2014 to July 2014, and had only limited contact in November 2014. The State also presented evidence showing that Mother had missed 14 UA tests in 2012, two in 2013, and two in 2014. The record indicates that Mother missed an additional 28 appointments between February 2013 and June 2013, for a total of 46 missed UA tests. Mother also did not submit any UA samples between March 2014 and July 2014 because she was not in contact with her case manager. Moreover, twice she tested positive for methamphetamine—once in August 2012 after a hair follicle test and again in September 2014. The September UA test came back negative after further testing, but Mother's delay in arriving for the additional testing may have caused the negative result.

The State further showed that Mother had inconsistent contact with the children. Visits were contingent on negative UA results, so every time Mother missed a UA test, she was not allowed to see the children. Several visits were also canceled because Mother failed to make the proper arrangements or confirm the visit. By December 2014, Mother had seen T.O. and J.O. only a handful of times since August 2013. She had seen J.A.F. even less because he refused to attend some of the visits, although they apparently remained in contact. The record also indicates Mother had not seen H.O. since August 2013.
because it was recommended that H.O. not see Mother due to behavior issues.

Evidence was also presented that Mother had failed to acquire stable housing or employment. While Mother had an approved home, she was at risk of losing it at the time of the termination hearing because she was unemployed. If she did not find a job by December 31—essentially 4 weeks from the hearing—she would be responsible for paying the $978 monthly rent, which she would not be able to pay without a job. Although she had applied to several places, Mother had no interviews scheduled. She had acquired three different jobs since June 2012 but remained at each one for only a few months at the most.

Our review of the record shows the State presented sufficient evidence that could have convinced a rational factfinder that the factors relied upon by the district court to find unfitness were highly probable. Therefore, the district court’s determination that Mother was unfit was supported by clear and convincing evidence.

2. Unfitness unlikely to change in the foreseeable future
Mother also argues the district court’s determination that her unfitness is unlikely to change in the foreseeable future was not supported by clear and convincing evidence. More specifically, she claims the 5 months between the July 2014 case plan and the termination hearing in December was an insufficient period of time for the district court to make its determination. She also points out her improvement since the enactment of that case plan.

*4 Our next step is to determine whether clear and convincing evidence supported the district court’s determination that a parent’s behavior is unlikely to change in the foreseeable future. See K.S.A.2014 Supp. 38–2269(a). The term “foreseeable future” is measured from the child’s perspective and takes into account a child’s perception of time. In re S.D., 41 Kan.App.2d 780, 790, 204 P.3d 1182 (2009). This court has considered periods of time as short as 7 months to be the foreseeable future from a child’s perspective. 41 Kan.App.2d at 790. A court may predict a parent’s future unfitness based on his or her past history. In re Price, 7 Kan.App.2d 477, 483, 644 P.2d 467 (1982).

As mentioned, the district court's unfitness finding was based in part on Mother missing several UA tests and failing to acquire stable housing and employment. These three tasks were in place in October 2012. They were also in place when the new case plan was established in June 2014. So, while Mother may claim she had only 5 months to comply with the July 2014 case plan, the district court's decision was based in part on tasks she had more than 2 years to complete.

The district court's decision was further buttressed by the fact that in the month before the termination hearing, Mother missed both scheduled visits and one UA test. In fact, Mother was out of contact with her case manager for most of the month. Based on these facts, we have no trouble concluding that the district court's determination that Mother's unfitness was unlikely to change in the foreseeable future was supported by clear and convincing evidence.

3. Children's best interests
Finally, Mother notes that the district court did not mention in its order that termination of her parental rights was in the best interests of the children, citing In re K.R., 43 Kan.App.2d 891, 233 P.3d 746 (2010).


*5 In K.R., another panel of this court reversed the termination of the mother's parental rights, based in part on the district court's failure to consider the best interests of the children. 43 Kan.App.2d at 905. However, several factors distinguish K.R. from this case. In K.R. there
were no allegations of addiction, no allegations of lack of interest in the children, and the children wanted to be with their mother. Here, there were allegations that Mother abused drugs, Mother's lack of contact with her case managers and several months without visits showed a lack of interest in the children, and the children did not appear to want to be with their mother. The record indicates that H.O. had a negative relationship with Mother such that visitation between Mother and H.O. was discouraged, J.O. and T.O. were attached to their placement, and J.A. F. wished to be adopted by his placement. Moreover, the district court's finding that termination was in the children's best interests was interwoven with its findings about Mother's unfitness. See In re C.A.G.-V., No. 113,334, 2015 WL 5224828, at *4 (Kan.App.2015) (unpublished opinion). In light of the record, we must conclude that the district court did not abuse its discretion in terminating Mother's parental rights.

Affirmed.

All Citations
360 P.3d 490 (Table), 2015 WL 7192418
FACTUAL AND PROCEDURAL HISTORY

History of Children in Custody

In 2004, Mother and B.F. were the natural parents of three other minor children who are not parties to this appeal. Those children were adjudicated children in need of care, and Mother relinquished her rights to all three children in 2005. B.F. relinquished his rights to two of the children, and the court terminated his rights to the third child in January 2006. All three children were subsequently adopted.

Following the relinquishment of their parental rights, Mother and B.F. continued to have children together; A.G. was born in March 2007. In September 2008, Mother and S.T. became involved in a brief romantic relationship, which resulted in the birth of L.G. in July 2009. Sometime after, Mother and B.F. got back together and A.F. was born in August 2011.

In December 2009, B.F.’s mother passed away, and B.F. and Mother drove to Arkansas to deliver some of his mother’s belongings to his sister. While in Arkansas, B.F. was pulled over; he got out of the vehicle and ran from the police, apparently because he knew he had a warrant issued for a parole violation. B.F. was arrested and sent back to prison; Mother was arrested for public intoxication. A.G. and L.G. were in the vehicle at the time of the stop and were taken into state custody in Arkansas. A.G. tested positive for THC; B.F. was possibly smoking marijuana in the car while driving. Mother, B.F., and S.T. were all given the opportunity to reintegrate with the children. While Mother moved to Arkansas and successfully completed the reintegration plan, B.F. was unable to reintegrate with A.G. due to his incarceration. S.T. also failed to reintegrate as he, too, was incarcerated at the end of the case plan in that matter.

Current Case Involving A.G. and A.F.

In October 2012, DCF social work specialist Betsy Wilson investigated allegations that A.G. and A.F. were without proper parental control. Wilson first contacted B.F. at the Olathe Detention Center because B.F. had been arrested and incarcerated due to involvement in an illegal drug transaction. A.F. was with him at the time of the transaction. Mother was also incarcerated at this time for an older case. Due to the incarceration of both parents,
there was no known caregiver for A.G. and A.F. A.F. was in police custody, and A.G. was with his paternal grandfather when the children were placed in DCF care. Wilson referred A.G. and A.F. for the filing of a child in need of care petition. A temporary custody hearing was held on October 16, 2012; both children were placed into DCF custody and referred to the out-of-home foster care contractor, KVC Behavioral Healthcare (KVC).

2 Case plan tasks were created to assist Mother and B.F. in addressing the needs of the children and the concerns in the petition. Case manager Megan Moser testified that the case plan tasks were created to reintegrate the children back into the home. On December 19, 2012, the district court found both A.G. and A.F. to be children in need of care and ordered 4-month reintegration plans for Mother and B.F.

Current Case Involving L.G.

At the time the case plans were ordered for A.G. and A.F., L.G. was not in State custody, nor was the State even aware of his existence. At one of the appointments involving A.G.'s and A.F.'s case, Mother brought L.G. along. The case manager testified she asked, " 'This is their cousin; right?' [Mother] said, 'Yes.' " The case manager had concerns that L.G. may not be a cousin and began to investigate. The case manager subsequently learned L.G. was Mother's child; the State also had not been aware of the 2010 Arkansas removal incident.

In March 2013, L.G. was placed in DCF custody due to a physical altercation between Mother and S.T. Deputy Brian Davis testified he was dispatched on a child abduction case, and Mother reported that she and S.T. got into an argument; S.T. became aggressive, grabbed Mother by her throat, and choked her. There were lacerations on Mother's face below her eye where S.T. bit her. Mother reported, "[S.T.] bit her so hard it felt like it hit the bone." L.G. was present when this altercation occurred. S.T. had taken L.G. and was subsequently arrested. A child in need of care petition for L.G. was filed, and DCF obtained an ex parte order for protective custody. DCF had information L.G. was living with a relative. However, when the case worker went to the home of the relative, she was unable to locate L.G. The police were contacted, and, after a difficult search, L.G. was finally located and taken into custody. DCF recommended out-of-home placement for L.G.

The cases involving the three children were combined, and when L.G. was brought into custody, Mother's case plan tasks were amended.

Mother's Reintegration Plan

As part of the reintegration plan, Mother was required to obtain and maintain stable housing, to notify the case manager of any changes of residence within 72 hours, and to provide proof of a reliable transportation plan. However, Mother continued to have negative encounters with law enforcement; Moser believed Mother had been in jail about three times since she began working on this case. When Mother was released from jail in December 2012, she stayed at Dove House, a shelter for battered women. Following her stay at Dove House, Mother did not have a stable residence, and she failed to notify the case manager of changes to her residence. Regarding the transportation plan, Mother did provide signatures of people who agreed to transport her. In the beginning, Mother was apparently able to obtain transportation, but, as time passed, there was inconsistency as Mother was arriving to appointments late. Mother failed to show consistency with her scheduled visits, showing up to visits 15 to 50 minutes late, or completely missing visits. Moser never felt comfortable extending Mother's visitation.

3 Mother was also asked to provide random urinalysis (UA) samples. There was some questionable timing surrounding Mother's submittal of UAs. On some occasions, Moser would ask Mother to submit a UA that day, and Mother would refuse. At other times, Mother said she could not submit a UA or she failed to come in until the following day. Moser arranged for KVC to pay for a hair follicle test, but Mother never completed this request. When Moser discussed police reports that indicated Mother's drug and alcohol usage, Mother would deny using and supply a different reason as to why the reports indicated otherwise. During Mother's incarceration, she attended AA and NA meetings. Moser testified, "[It was interesting to me that she refused to submit the hair follicle test and said she hasn't had an issue with drugs, yet she went to AA meetings in jail."

Mother did provide proof of her completion of a level 1 mental health evaluation, but she never provided proof of following the recommendations. She failed to see an individual therapist on a consistent basis in order to address mental health concerns. Mother provided proof she attended a minimum of three domestic violence
classes, but there were still concerns regarding Mother's understanding of the significance of this task. Moser testified,

"[T]he impression I got when I spoke with her is that she denied the significance of domestic violence. That concerns me how to—in order for someone to change, I believe you have to realize where you are, and so I could say there is concerns [sic] of her seeing the significance of domestic violence and what that looks like in the future."

There were also concerns regarding the stability of Mother's income and her ability to meet the family budget. Her employment appeared to be sporadic at best. At one point, she worked approximately 6 days a month for her uncle's tree service; Mother was briefly employed by Sonic, worked at Caseys's about a month prior to trial, and worked a temporary position with American Eagle about a week prior to trial.

On April 29, 2013, the district court refused to formally extend the reintegration plans.

A.G. also reported that he had been locked in his bedroom and had been unable to get himself out. A.G. said he had been flicked in the head, but it was not clear that this was a form of punishment; it may have been a game. During the interview, A.F. was more interested in playing with toys than answering any questions; accordingly, the special investigator chose not to conduct an interview with him but observed him instead. The special investigator testified that through his observations, A.F. appeared to be a "healthy, normal, little young man" and noted both children were developmentally on track.

There were issues involving permanency and stability for the children. At the age of 5, A.G. had spent over 2 years of his life in State care. Moreover, there was uncertainty as to where A.G. lived during the rest of the time. A.F., at the age of 2, had spent approximately 13 months in custody. L.G., at the age of 4, had either been in custody or had not resided with his parents for 3 years or more.

After hearing testimony and reviewing notes, transcripts, and cases where the court took judicial notice, the district court found by clear and convincing evidence that Mother was unfit to properly care for A.G., A.F., and L.G. The district court also found that the conditions of Mother's unfitness were unlikely to change in the immediate or foreseeable future and concluded it was
in the best interests of all three children to terminate Mother's parental rights.

Mother timely appeals.

DID THE DISTRICT COURT ERR BY FINDING MOTHER WAS UNFIT AND BY TERMINATING HER PARENTAL RIGHTS?

Mother argues on appeal the district court's finding of unfitness was not supported by clear and convincing evidence and that the court erred by terminating her parental rights.

If a child is adjudicated a child in need of care, parental rights may be terminated "when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future." K.S.A. 2013 Supp. 38-2269(a). K.S.A. 2013 Supp. 38-2201 et seq., the Revised Kansas Code for Care of Children, lists a number of nonexclusive factors the district court must consider in determining a parent's unfitness. See K.S.A.2013 Supp. 38-2269(b) and (c). Any one of the factors may, but does not necessarily, establish grounds for terminating a parent's rights. See K.S.A.2013 Supp. 38-2269(f). The district court is not limited only to the statutory factors in making a determination of unfitness. See K.S.A.2013 Supp. 38-2269(b).

*K When reviewing a district court's findings on this point, our standard of review is clear: The district court's findings must be supported by clear and convincing evidence. K.S.A.2013 Supp. 38-2269(a). We determine whether such evidence could have convinced a rational factfinder such facts were highly probable by clear and convincing evidence as viewed in the light most favorable to the State. In re B.D.-Y., 286 Kan. 686, 705, 187 P.3d 594 (2008). In making this determination, we do not weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. 286 Kan. at 705.

In the present case, the district court found Mother unfit based on the following statutory factors:

- KVC made reasonable and appropriate efforts that failed to assist Mother in reintegrating with her children, satisfying K.S.A.2013 Supp. 38-2269(b)(7). These efforts included transportation of the children to visits; meeting the children's needs, such as painful dental procedures; offering to pay for Mother's hair follicle test; and providing general case management on a regular basis.

- There was a lack of effort on Mother's part to adjust her circumstances, conduct, and conditions in order to meet the needs of her children, satisfying K.S.A.2013 Supp. 38-2269(b)(8).

- Mother failed to maintain regular contact and communication with the children and KVC at various points in time, satisfying K.S.A.2013 Supp. 38-2269(c)(2).

- Mother failed to complete the tasks necessary to reintegrate with her children, satisfying K.S.A.2013 Supp. 38-2269(c)(3).

First, we must determine whether the district court's findings of unfitness were supported by clear and convincing evidence. Mother argues the evidence presented was not sufficient to convince a rational factfinder that she was unfit, meaning her parental rights should not be terminated. She contends that throughout the case she demonstrated significant progress in the tasks given to her and was becoming more stable and responsible.

As previously analyzed, the district court heard evidence regarding Mother's history with DCF, which involved her relinquishment of parental rights of three other children and her history involving A.G. and L.G. in the Arkansas matter. Mother failed to show up to meetings on time, and she missed several visits with her children. The children were exposed to physical abuse and domestic violence. Mother failed to obtain stable housing. She only provided a lease to the court a few days before the district court made its decision. Her employment history was not consistent, and she was unable to support her family. Mother was incarcerated while trying to reintegrate with her children, and she refused to complete a hair follicle test.
Based on the aforementioned facts, we conclude there was clear and convincing evidence to support the district court's determination that Mother was unfit by reason of conduct or condition which rendered her unfit to care properly for her children.

*6 Our next step is to determine whether clear and convincing evidence supported the district court's determination that Mother's behavior was unlikely to change in the foreseeable future. See K.S.A.2013 Supp. 38-2269(a). The term "foreseeable future" is measured from the child's perspective and takes into account a child's perception of time. In re S.D., 41 Kan.App.2d 780, 790, 204 P.3d 1182 (2009). We have considered periods of time as short as 7 months to be the foreseeable future from a child's perspective. 41 Kan.App.2d at 790. A court may predict a parent's future unfitness based on his or her past history. In re Price, 1 Kan.App.2d 477, 483, 644 P.2d 467 (1982).

Mother argues she demonstrated her ability to change when she successfully completed the reintegration plan in Arkansas and the district court ignored the progress she made in this case. She contends there was not clear and convincing evidence to support the court's conclusion that she was unfit and was not likely to change in the foreseeable future.

The district court heard testimony regarding the significant amount of time all three children had spent in state custody. Mother had considerable involvement with DCF. She was issued a formal reintegration plan, but she failed to complete several necessary tasks. The district court may predict Mother's future unfitness based on her history. There was clear and convincing evidence to support the district court's determination that Mother's behavior was unlikely to change in the foreseeable future. Our last consideration is whether the district court correctly determined that terminating Mother's parental rights was in the children's best interests. K.S.A.2013 Supp. 38-2269(g)(l) provides that even after a finding of unfitness, the district court must determine whether the termination of parental rights is in the best interests of the child.

Because it hears the evidence directly, the district court is in the best position to determine the best interests of the child, and an appellate court cannot overturn this determination without finding an abuse of discretion. In re K.P., 44 Kan.App.2d 316, 322, 235 P.3d 1255, rev. denied 291 Kan. 911 (2010). An abuse of discretion occurs when no reasonable person would agree with the district court, or when the court bases its decision on an error of fact or an error of law. See Critchfield Physical Therapy v. The Taranto Group, Inc., 293 Kan. 285, 292, 263 P.3d 767 (2011). In determining whether the district court has made a factual error, we review any additional factual findings made in the best-interests determination to see that substantial evidence supports them (recognizing that the preponderance-of-the-evidence standard applies in the district court). In re R.S., 50 Kan App.2d ——, ——, —— P.3d —— (2014) (No. 111,027 filed October 24, 2014).

On appeal, Mother incorrectly contends the district court gave no consideration to the physical, mental, or emotional needs of the children. The district court addressed the children's needs were not being met including some rather difficult and probably painful dental procedures to A.G. whose teeth were in complete disrepair. Additionally, the district court found the children deserved permanency, which could not be provided by Mother. Mother fails to support her argument that the court abused its discretion by failing to consider an alternative to termination because there was no credible evidence to support the termination of Mother's parental rights. Therefore, the district court could fairly conclude it was in the children's best interests to terminate Mother's parental rights.

*7 Ultimately, the evidence provided at the termination hearing demonstrated that Mother could not adequately provide for the needs of her children in the future. As such, the district court's decision to find Mother unfit was supported by clear and convincing evidence, and the court did not abuse its discretion by terminating her parental rights.

Affirmed.

All Citations

338 P.3d 23 (Table), 2014 WL 6676225
Mother and Father have two daughters. The older daughter, K.M., was removed from the parents' custody in February 2012 in a private child-in-need-of-care (CINC) proceeding in Marion County, Kansas. Father and K.M. were living with Father's mother (Grandmother), and Mother was living in Oklahoma. Grandmother filed a private CINC petition because she was providing K.M.'s care most of the time; she reported Father was irresponsible and did not parent K.M. and Father was reluctant to take K.M. for medical treatment. That case is not part of this appeal. This appeal involves the second daughter, A.M.

In August 2012, Mother gave birth to A.M. in Sedgwick County, Kansas; DNA testing later confirmed C.L.M. as A.M.'s father. The Department for Children and Families (DCF) received an intake about the family based upon the hospital staff's concerns. Mother had an extensive history of mental health issues, and the nurses were concerned about the lack of running water in the family's home and Mother's reports of domestic violence.

The DCF investigation revealed concerns about Mother's willingness or ability to take care of A.M. The social worker interviewed Mother twice while she was in the hospital. Mother told the social worker she had been sexually abused as a child and Father had been in foster care between the ages 12 to 18. Mother admitted to smoking marijuana several times while she was pregnant and reported Father smoked marijuana regularly. Mother had been taking medications for 6 months for schizoaffective disorder and had characteristics of schizophrenia and bipolar disorder but considered herself currently stable. Mother refused the social worker's offer of a substance abuse evaluation but agreed to services from DCCCA Family Preservation (DCCCA).

Mother also told the social worker that Father had forced her to have sex and had once cut the tires of her car when she threatened to leave him. Although he had never hit her, she did not feel safe going home with him. She also admitted she had been violent toward Father when she had not been taking her medication. Mother agreed that she and A.M. would go to a domestic violence shelter when they were released from the hospital. Two days after leaving the hospital, Mother's views apparently changed; she denied any domestic violence between Father and her and told the social worker that after talking to Father she
was anxious to get back with him. She also reported that Father agreed to participate in DCCCA services.

*2 At the social worker's request, Father purchased additional infant supplies and restored running water to the house. Although he previously had refused DCCCA services with K.M., Father agreed to accept those services now. Father confirmed that Mother had been violent toward him in the past but things were much better after Mother started taking medication. Father denied sexually abusing anyone, but he admitted that he was removed from his home when he was 11 because he and his 6-year-old brother were sexually "experimenting."

Two DCCCA workers were assigned to work with the family. During the initial meeting after Mother and A.M. returned to the home, Father spent considerable time discussing how unfair it was that K.M. had been taken away from them and he and Mother should not be required to comply with court orders. During a second meeting, Mother was warned against breastfeeding A.M. in the parents' bed at night because of the risk that A.M. might be smothered. Although the parents agreed, the situation occurred repeatedly. Social workers also learned from Mother's physician that she should not be breastfeeding A.M. while taking psychotropic medication. However, the parents continued to insist on the breastfeeding of A.M.

In subsequent visits, things did not fare better. DCCCA staff asked both parents to undergo mental health assessments, and they asked Father to complete a drug and alcohol assessment. Mother missed a healthy babies class, and neither parent had enrolled in domestic violence classes. Moreover, Mother had not yet scheduled A.M. for her 2-month vaccinations. Notwithstanding DCCCA's requests, Mother continued to breastfeed A.M. while taking her medication.

By December 10, 2012, neither parent had signed up for domestic violence classes, and Father had not yet scheduled mental health or drug and alcohol assessments. Mother continued her history of stopping her medication and was still experiencing hallucinations. Although Mother was beginning to attend her mental health treatments more regularly, the therapist found Mother's progress to be minimal. Mother continued to breastfeed against doctors' advice, the parents had made little progress in completing assessments or classes that had been ordered, and Mother again wanted to leave Father.

In light of the parents' history and concerns of ongoing issues, DCF requested that a CINC petition be filed and A.M. be removed from the family home and placed in DCF protective custody. On December 13, 2012, the court issued an ex parte order of protective custody placing A.M. in DCF custody, ordering her removal from the home, and ordering supervised visitation for Mother and Father; the CINC petition was filed on December 17, 2012. As part of its January 7, 2013, Order of Temporary Custody, the district court directed both parents to complete anger management classes, domestic violence classes, hair follicle testing, age-appropriate parenting classes, random urinalysis testing, and substance abuse evaluations. In addition, the court ordered Mother to undergo individual therapy and complete a psychological examination and ordered Father to undergo a clinical interview and assessment as well. A month later, A.M. was adjudicated a CINC as to Mother and by default as to Father because Father did not appear for the adjudication hearing.

*3 In the months that followed, the parents' compliance with court orders was inconsistent. In June 2013, the State filed a motion to terminate both parents' rights. The State alleged Mother was unfit for a number of reasons, including her history of mental illness, the parents' history of domestic violence, and her failure to adjust her circumstances to meet the needs of her child. The State alleged Father was unfit because of mental illness, his history of drug use and failure to complete UA and hair follicle testing, and his failure to focus on the needs of A.M.

An evidentiary hearing was held on September 3, 2013. The witnesses included a substance abuse counselor, a psychologist, two visitation workers, and two permanency employees. The substance abuse counselor testified that she evaluated Father in April 2013. Father reported to the counselor that he experimented with alcohol and marijuana when he was 17 but quit using both (other than social drinking) when he was 18. Father did not report current usage of substances; however, he did say he last used marijuana 3 months before the evaluation. Based upon Father's self-reported information, the counselor stated Father did not meet the criteria for substance abuse treatment.
Father completed the court-ordered clinical assessment; however, Father refused to allow the psychologist to release her report until the case manager repeatedly insisted. The psychologist testified that Father denied or minimized the allegations included in the CINC petition. Father claimed he did not have any mental health issues. Father insisted he had repeated undergone periodic psychological assessments while in foster care as a teenager, and he claimed he had above-average intelligence. Other than Mother, Father had little social support because he had severed most of his ties with his own family. Father also denied any responsibility for the removal of his children from the home, believing he was a victim of the situation and nothing he did was responsible for the child's removal. He believed he and Mother were perfect parents.

Ultimately, the psychologist diagnosed Father with narcissistic personality disorder with paranoid features, meaning Father had a pervasive pattern of grandiosity and need for adoration; typically, such a person lacks empathy for others. The paranoid feature was based on Father's thought processes that Grandmother and the State were plotting against him. The psychologist did not recommend therapy for Father but only because research showed that persons not motivated to change did not do well in therapy.

The visitation supervisors both testified Father did not seem to want to spend time with A.M. during the visitations. Mother always interacted with A.M. during the visitation and brought age-appropriate toys. Mother also fed A.M. and changed her diaper. When Father did interact with A.M., he cuddled her, kissed her, and hugged her, but this was not often. Although Father would play with A.M. occasionally, in most visits, Father only briefly engaged with A.M. and usually sat and watched Mother and A.M. together. When the supervisor reminded Father that he was missing his opportunity to interact with A.M., he seemed to prefer arguing about the case and spent most of his time repeating to the social worker how the removal of K.M. and A.M. was unfair and how they were victims of the system. Mother also asked Father to stop arguing, to spend time with the child, and to help her. On several occasions, their arguments would distract both of them from watching A.M. Occasionally, Father would be on the phone during the visitation.

*4 The visitation supervisors noted other problems. The parents were regularly late to visitations by at least 10 minutes and occasionally failed to bring supplies because they spent the money on something else, i.e., energy drinks for Father. Father also missed three visits; he called Mother during one of these visits and argued with her on the phone. The social workers never saw much of a bond between Father and A.M. Mother was always excited and interacted with the child, and A.M. bonded with her. However, Mother would become easily frustrated if the child got into something or was not being still during a diaper change. Father repeatedly reported that his family was perfect and demanded new caseworkers and attorney to work with them.

Visits continued to be supervised because of Father's ongoing anger, repeated difficulty in calming him down, and his consistent failure to submit hair follicle or UA samples to confirm he was not using drugs. At the end of May or early June 2013, workers saw some improvement; both parents attended most of the visits and both interacted appropriately with A.M. Unfortunately, this improvement lasted only for couple of weeks; thereafter, the parents relapsed into their prior bad behavior.

The parents were not consistent with complying with the court's orders. For example, Mother provided documentation regarding her monthly disability benefits, and Father reported that he worked nearly every day and long hours for a cable communications company. However, Father never provided any pay stubs to show he was gainfully employed. Mother completed anger management classes and domestic violence classes, but Father did not believe he should be required to take anger management or domestic violence classes. Of the seven hair follicle tests requested of each, Mother completed only one test and Father completed only one test; the results of both tests were negative. Of the nine requested urinalysis tests, Mother completed two and Father complete one; the results of those tests were also negative. Both parents did complete psychological evaluations, substance abuse evaluations, and parenting classes.

Mother's mental health was an ongoing concern as well. Mother had completed some individual therapy but missed several appointments and was not able to schedule any additional appointments because she was late on her payments. The case manager did not receive
any documentation from Mother's doctors about her medication status, although Mother provided verbal updates. Mother admitted that if she was not on her medication, she could be very violent. Mother had been hospitalized three times during her life for mental health issues, once as recently as 2012. During her May 2013 psychological assessment, mother reported that her relationship with Father was not good; he was verbally abusive, and she only stayed with Father because she could not take care of the girls by herself. Mother minimized any responsibility on her part for her children's removal from the home. The psychologist noted that Mother had stopped taking one of her medications, Lithium, without telling her medication manager.

*5 Case workers testified that A.M. was happy in her foster home and had bonded with both Grandmother and K.M. One case manager testified that she did not believe reintegration was possible because both parents would need nearly constant in-home services and regular check-ins, both parents needed to go to therapy together to improve their communication, and Father needed parenting skills in the event Mother failed to take her medication.

Ultimately, termination was recommended for a variety of factors, including lack of documentation that Mother was taking her medication on a regular basis; Father's failure to complete domestic violence classes; the parents' lack of individual therapy; no proof Father was employed or how much money he made; and Father's inability to see anything from the child's perspective or put A.M. first.

Following the testimony, the district court took the matter under advisement. When it reconvened on October 4, 2013, the court found the parents were unfit due to mental or emotional illness, reasonable efforts had been made to rehabilitate the family and those efforts had been unsuccessful, and the parents had failed to adjust their circumstances or conduct to meet the needs of the child. The court also found, based upon the entire record, the parents had had ample opportunity to change.

However, the court indicated it was not prepared to terminate the parents' rights at the time because it found no trial testimony that termination of parental rights would be in the best interests of A.M. If such evidence had been presented, the court would have granted the motion to terminate. The court then offered the State the opportunity to review the record and point out the evidence supporting its claim that termination was in the best interests of the child. The judge stated: "In the absence of that, I think you'll need to... re-open the case by Motion to Present Additional Evidence...." The court scheduled the matter for a hearing later that month.

At the October 29, 2013, hearing, the State informed the court it was prepared to recall one of its witnesses to testify about the best interests of the child. Both the court and the parties were concerned about whether the prior findings established only present unfitness. The court ultimately stated it believed the State had presented sufficient evidence regarding both present and future unfitness. Mother wanted a separate hearing to address the issue because the State did not advise her that it would be proffering additional evidence at this hearing. Father opposed giving the State another chance to reopen its case when it had a full opportunity to present evidence at the initial hearing. Father's counsel conceded, however, that the State could file a new motion to terminate and, in the meantime, reintegration efforts could continue.

The court allowed the State to proceed. The State recalled Dan Beeson, the most recent case manager. Beeson testified it was in A.M.'s best interests for her parents' rights to be terminated in order for her to have permanency. He testified that Grandmother, who had been caring for the child, could adopt her. Beeson testified that Mother had a good relationship with Grandmother and could still maintain a relationship with A.M. Beeson testified that, based upon his observations, A.M. had a limited bond with Mother and no bond with Father due to his ongoing lack of interaction with her. He did not see the parents' unfitness likely to change in the future because of each parent's mental health issues.

*6 After a short recess, the court reconvened. After reviewing the documents and information from all the hearings, the court noted that Mother's mental condition was controlled by medication. However, she reported she stayed with Father only because she could not take care of the children by herself. Due to Father's belief he did not need treatment for his mental condition, his condition was unlikely to change. Because of Mother's inability to raise A.M. and Father's lack of interest in the actual day-to-day raising of the child, the court found clear and convincing evidence established the parents were unfit, such unfitness
was unlikely to change in the foreseeable future, and it was in A.M.'s best interests to terminate their rights.

Both parents timely appeal from the initial journal entry.

DID THE DISTRICT COURT ABUSE ITS DISCRETION IN PERMITTING THE STATE TO REOPEN ITS CASE?

On appeal, both Mother and Father challenge the district court's actions in "inviting" and then permitting the State to reopen the record to present additional testimony regarding the best interests of A.M. Specifically, Mother alleges the court went beyond the legal framework and abused its discretion in permitting the State to reopen its case when it had ample opportunity to present all of its evidence in the initial hearing.

Father argues that based on the court's initial bench ruling—the parents were presently unfit—the court should have denied the State's motion to terminate. Father notes the court found no evidence pertaining to the best interests of the child and was silent as to whether the parents could change in the foreseeable future, two of the necessary elements required to be proved by the State. Father argues on appeal that the district court erred in (1) not permitting more evidence on whether the parents would likely change in the foreseeable future; and (2) allowing the State to present additional evidence on the best interests of the child. While he argued the State failed to carry its burden of proof, significantly, Father conceded before the district court that even if the court denied the State's request to reopen the case, the State could immediately refile another motion to terminate and repeat the process. Neither party requested the opportunity to put on additional evidence about future fitness or best interests.

We find no error here. First, it appears that the district court mistakenly believed that someone must specifically testify that it is in the best interests of the child to terminate parental rights: "I am not prepared to terminate the rights at this time ... because in my review of the record, I could not find testimony ... that termination of parental rights is in the best interest of this child." While the district court must make that finding based upon the evidence presented, there is no requirement that testimony specifically address it. The court can make its own conclusions based upon the evidence presented regarding parental fitness and other circumstances.

*7 Second, even if some further testimony on best interests was needed, a trial court has broad discretion to determine whether a party may reopen its case to offer additional evidence. See State v. Brown, 295 Kan. 181, 204-05, 284 P.3d 977 (2012); McDaniel v. Jones, 235 Kan. 93, 114, 679 P.2d 682 (1984). A judicial action constitutes an abuse of discretion only if the action (1) is arbitrary, fanciful, or unreasonable; (2) is based on an error of law; or (3) is based on an error of fact. Northern Natural Gas Co. v. ONEOK Field Services Co., 296 Kan. 906, 935, 296 P.3d 1106 (2013). We find no abuse of discretion here.

At the outset, we note the Revised Kansas Code for Care of Children, K.S.A.2013 Supp. 38–2201 et seq. (the Code) neither explicitly provides for nor bars the district court from reopening a case for additional evidence. K.S.A.2013 Supp. 38–2267(a) requires the court set a hearing on a motion to terminate parental rights promptly after such a motion is filed, and the court may continue the proceeding only if it is in the best interests of the child. In addition, the Code must be liberally construed to carry out the policies of the State which include making the ongoing “physical, mental and emotional needs of the child decisive considerations in proceedings” and to “dispose of all proceedings under this code without unnecessary delay.” K.S.A.2013 Supp. 38–2201(b)(3), (4).

Reopening a case may be permitted even if the case has been submitted to the factfinder for consideration. State v. Norton, 292 Kan. 437, 440, 254 P.3d 1264 (2011). In general, when permitting a party to reopen a case, our Supreme Court set forth the factors the district court must consider as part of its decision:

“ In exercising its discretion, the court must consider the timeliness of the motion, the character of the testimony, and the effect of the granting of the motion. The party moving to reopen should provide a reasonable explanation for failure to present the evidence in its case-in-chief. The evidence proffered should be relevant, admissible, technically adequate, and helpful to the jury in ascertaining the guilt or innocence of the accused.
The belated receipt of such testimony should not "imbue the evidence with distorted importance, prejudice the opposing party's case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered." [Citation omitted.] "State v. Murdock, 286 Kan. 661, 672–73, 187 P.3d 1267 (2008).

Under these factors, the parents have failed to establish any abuse of discretion. While admittedly the State failed to explain why it neglected to explicitly ask its witnesses about A.M.'s best interests, there was considerable testimony presented during the original hearing which would allow a reasonable inference it was in A.M.'s best interests to terminate her parents' rights. This included the testimony of the case managers that both parents suffered from significant mental illnesses that were not being adequately addressed by either of them and that A.M. had bonded with Grandmother and K.M., whereas her bonding with Mother was minimal and with Father essentially nonexistent.

Moreover, there is no dispute that this "new" evidence was relevant, admissible, and helpful to resolve the legal issues. The testimony included explicit statements of best interests by coalescing evidence from the initial hearing. Additionally, neither parent requested, after the evidence was presented, an opportunity to present additional evidence to respond to the best interests issue. While Mother did request a continuance before the new evidence to prepare for an additional evidentiary hearing, neither parent argues on appeal what additional evidence they could have presented to counter that belatedly presented by the State.

In light of the Code's directive for prompt adjudications, considering issues in light of "child time," and the district court's duty to safeguard the best interests of A.M., it would be contrary to our state's policies to require the State to refile and relitigate the case. See K.S.A.2013 Supp. 38–220(l)(b). This would only serve to keep A.M., who had been placed apart from her parents for all but 4 months of her life, in limbo for additional time.

The district court did not abuse its discretion in allowing the State to reopen its case under the circumstances.

WERE THE DISTRICT COURT'S FINDINGS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE?

Father contends there was not clear and convincing evidence to support the termination of his parental rights. Mother's argument focuses solely on the district court's decision to permit the State to reopen its case. Mother argues there was insufficient evidence of a clear and convincing nature to justify the termination of her parental rights to A.M. because the State failed to present evidence at the initial hearing that Mother's "present unfitness" was unlikely to change in the foreseeable future or that it was in A.M.'s best interests for her rights to be terminated. Mother apparently does not contest the court's original finding that she was currently unfit as a parent.

We have already found the district court did not abuse its discretion in permitting the State to present new evidence. Because Mother essentially fails to argue the merits of the question, we could reject her arguments for that reason alone. Friedmann v. Kansas State Bd. of Healing Arts, 296 Kan. 636, 645, 294 P.3d 287 (2013) (point raised incidentally in brief and not argued therein is deemed abandoned). In considering the parents' claims of a lack of evidence to support termination of their rights on the merits, a careful review of their briefs establishes each parents' claims of fitness were based on the theory that each parent made up for the shortcomings of the other; thus, as a couple, their rights should not have been terminated. We disagree.

Once a child has been adjudicated a CINC, "the court may terminate parental rights or appoint a permanent custodian when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future." K.S.A.2013 Supp. 38–2269(a). In making such a determination, the court, among other things, is to consider:

*(1) Emotional illness, mental illness, mental deficiency or physical disability of the parent, of such duration or nature as to render the parent unable to care
for the ongoing physical, mental and emotional needs of the child;

(2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature;

(3) the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental or emotional needs of the child;

(4) physical, mental or emotional abuse or neglect or sexual abuse of a child;

(5) conviction of a felony and imprisonment;

(6) unexplained injury or death of another child or stepchild of the parent or any child in the care of the parent at the time of injury or death;

(7) failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;

(8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child; and

(9) whether the child has been in extended out of home placement as a result of actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply." K.S.A.2013 Supp. 38–2269(b).

If the child is not in the physical custody of a parent, as was the case here, the court is also to consider:

"(1) Failure to assure care of the child in the parental home when able to do so;

(2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;

(3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home; and

(4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay." K.S.A.2013 Supp. 38–2269(c).

Importantly, Kansas law provides that the existence of any one of the factors listed in K.S.A.2013 Supp. 38–2269(b) and (c) may, but does not necessarily, establish grounds for termination of parental rights. K.S.A.2013 Supp. 38–2269(f).

When reviewing a district court's findings on this point, our standard of review is clear: The district court's findings must be supported by clear and convincing evidence. K.S.A.2013 Supp. 38–2269(a). We determine whether such evidence could have convinced a rational factfinder such facts were highly probable by clear and convincing evidence when viewed in the light most favorable to the State. In re B.D.-Y., 286 Kan. 686, 705, 187 P.3d 594 (2008). In making this determination, we do not weigh conflicting evidence, pass on the credibility of witnesses, or redetermine questions of fact. 286 Kan. at 705.

As the district court articulated, there was ample evidence from the initial hearing to find Mother was unfit and her condition was unlikely to change in the foreseeable future. Mother had an ongoing mental health condition that, she admitted, could make her violent if she was not taking medication. While her visitations went well and she clearly loved her daughter, Mother reported in her June 2013 evaluation she had stopped taking one of her prescriptions without advising her physician. Moreover, while she had completed various classes, Mother failed to keep up with her medication management program or mental health therapy. Mother also admitted she wanted to leave Father but only stayed because she knew she could not care for the child on her own. Based upon Father's reactions to her requests for help with A.M. during visitations, the record supports the conclusion that Mother likely would not receive significant support from Father in the actual day-to-day care for the child.

*10 Father contends he held steady employment, promptly completed the drug and clinical assessments, and complied with most of the court's orders. He further contends the caseworkers' primary concerns were with Mother's mental health and his attitude led to him being treated unfairly. He contends the only reason he was considered unfit was because the case workers did not like his rudeness and intensity. Father also contends he was making progress and was not given enough time to adjust his circumstances.

But despite Father's claim of steady employment, the record contains no documentation to establish he was, in fact, steadily employed. When A.M. was born, the family home had no running water. The parents appeared
at visitations on a variety of occasions without supplies, saying they could not afford them.

Father emphasized his drug assessment found him to be a low risk for drug dependence and his clinical assessment did not recommend any therapy. However, the drug assessment was based only upon Father's self-reported use of drugs and alcohol. Contrary to Father's statements to the evaluator, Mother reported Father regularly used marijuana. Though the UA and hair follicle tests Father submitted to were negative, Father failed to provide UA or hair follicle samples on the majority of the occasions requested.

As for his clinical assessment, Father completed that assessment without a referral from the caseworkers but initially refused to allow it to be released to the court. The assessment, once finally obtained, revealed a narcissistic personality disorder with paranoid features diagnosis. The only reason the clinician did not recommend therapy was simply because Father did not believe he had any problems or needed to change and, consequently, therapy would have been of little benefit. We also note that contrary to Father's assertions, the record does not reveal any evidence that Father ever attended any therapy sessions.

Finally, while it is true that Father's rudeness would not be a basis for termination, it was a symptom of his personality disorder and reflected on his ability to parent. During much of the case, Father's focus was typically on himself, and he besieged caseworkers during the once a week hourly visitations with A.M. with complaints about the unfairness he felt rather than making any effort to bond with his daughter. While Father apparently believed Mother should be the primary caretaker, his unwillingness to engage with his daughter not only prevented bonding but also was sufficient to establish he would not likely be able to care for A.M. if Mother became incapacitated.

We conclude the record supports the district courts unfitness findings and that such unfitness was unlikely to change in the foreseeable future.

WAS TERMINATION OF MOTHER'S AND FATHER'S PARENTAL RIGHTS IN A.M.'S BEST INTERESTS?

As the decision to terminate a parent's rights is a discretionary one once unfitness has been established, we review the district court's decision to terminate the parents' rights under an abuse of discretion standard, meaning we may reverse only if no reasonable person would agree with the district court. In re R.S., 50 Kan.App.2d ——, 2014 WL 5408429 (No. 111,027, filed October 24, 2014), Slip op. at 14.

*11 We find the State presented sufficient evidence it was in A.M.'s best interests to terminate her parents' rights. A.M. had been in out-of-home placement for 10 months of her young 14-month life. Although Mother made great strides in attempting to bond with A.M., that did not make up for the shortcomings in ensuring her mental health and medication management remained stable. Mother's ongoing ambivalence about remaining with Father was significant in light of her own belief she could not cope without his presence. Father's actions repeatedly reflected his narcissistic tendencies and his inability to focus, other than for short periods, on his child. Moreover, A.M. had bonded with her caretaker, Grandmother, who was also caring for her sister.

The district court did not err in terminating the parents' rights, and we affirm its judgment.

STANDRIDGE, J., concurring: I concur in the result.

All Citations

338 P.3d 23 (Table), 2014 WL 6676181
In re C.N., 314 P.3d 900 (2013)

314 P.3d 900 (Table)
Unpublished Disposition

(Pursuant to Kansas Supreme Court Rule 7.04(f),
unpublished opinions are not precedential and
are not favored for citation. They may be cited for
persuasive authority on a material issue not addressed
by a published Kansas appellate court opinion.)

Court of Appeals of Kansas.

In the Interest of C.N., a Child
under Eighteen (18) Years of Age.

No. 109,695.


Appeal from Sedgwick District Court; Harold E. Flaigle,
Judge.

Attorneys and Law Firms

Michael E. Lazzo, of Wichita, for appellant natural father.

Beth Lange, of Kansas Department for Children and
Families, for appellee.

Before Standridge, P.J., GREEN and LEBEN, JJ.

MEMORANDUM OPINION

PER CURIAM.

*1 J.N. (Father), the natural father of C.N., appeals from
the district court’s decision to terminate his parental rights.
Specifically, Father argues the State failed to establish
by clear and convincing evidence that his decision to
continue using drugs was conduct or a condition that
renders him unable to properly care for his child. After
hearing from Father and several of the State’s witnesses,
the district court terminated Father’s parental rights. The
court found Father was unfit under K.S.A.2012 Supp. 38–
2269(b)(3) (Father’s excessive use of intoxicating liquors
or narcotic or dangerous drugs is of such duration or
nature as to render him unable to care for the ongoing
physical, mental, or emotional needs of the child), under
K.S.A.2012 Supp. 38–2269(b)(7) (failure of reasonable
efforts made by appropriate public or private agencies to
rehabilitate the family), and under K.S.A.2012 Supp. 38–
2269(b)(8) (lack of effort on the part of Father to adjust his
circumstances, conduct, or conditions to meet the needs
of the child). The court further found the condition was
unlikely to change in the foreseeable future. After making
these determinations, the court considered the physical,
mental, and emotional health of the child and found it was
in C.N.’s best interests for the court to terminate Father’s

When this court reviews a district court’s decision
terminating parental rights, we consider “whether, after
review of all the evidence, viewed in the light most
favorable to the State, [we are] convinced that a rational
factfinder could have found it highly probable, i.e., by
clear and convincing evidence, that the parent’s rights
should be terminated and such termination was in the
child’s best interests.” In re S.D., 41 Kan.App.2d 780,
785, 204 P.3d 1182 (2009). “[C]lear and convincing
evidence” is evidence that is sufficient to establish “that
the truth of the facts asserted is ‘highly probable.’ “ In
making this determination, the panel does not reweigh
the evidence, pass on the credibility of witnesses, or
reexamine the court’s findings.

In this case, the State filed a petition for cultivation and
application for an ex parte temporary custody order for C.N. on April 9, 2012. The CINC
petition was filed after law enforcement conducted a traffic stop and observed C.L. (Mother) hug her 5-year-old son
C.N. and slip something into the pocket of his shorts.
After discovering a bag of methamphetamine in C.N.’s
pocket, the officers arrested Mother and placed C.N. into
protective custody. When placed in protective custody,
C.N. reported to authorities that he knew about “pipes”
and “weed” and talked about Father using them and
about seeing them around the family home.

At the time Mother was arrested, Mother and Father
had been separated for 3 years. Although the couple
had no formal custody arrangement, Father saw C.N.
on weekends. Father appeared at the temporary custody
hearing held on April 10, 2012, but the court declined
to grant temporary custody of C.N. to Father based on
evidence that Father failed to protect C.N. from exposure
to Mother’s drug use and that Father admitted to a
history of his own methamphetamine use. In addition, a
drug test taken by Father on the day of the temporary
custody hearing later came back positive for the use of
methamphetamine. To assist the court in subsequently
determining whether reunification with Father would be a viable alternative, Father was ordered by the court to complete a clinical assessment, a substance abuse evaluation, and parenting classes. Father also was ordered to take several hair follicle tests and a series of random urinalysis screens to test for ongoing drug use.

*2 In May 2012, the district court adjudicated C.N. a child in need of care. In November 2012, the State filed a Motion for Review and Termination of parental rights alleging that both parents were unfit. In support of the motion, the State cited to Mother's and Father's long histories of extensive drug abuse and their lack of effort to overcome the barriers that were preventing them from meeting C.N.'s needs. Although 8 months had passed since the court ordered Father to take periodic hair follicle tests, Father had failed to take one, let alone the several ordered, by the time the State filed its motion in November.

The court scheduled the case for a review and termination hearing on February 8, 2013, but the hearing was continued because the Kansas Department for Children and Families failed to provide a witness list. Notwithstanding this continuance, the district court ordered the parents to submit to urinalysis testing on that day, with a hair follicle test to follow within 7 days. Father tested positive for methamphetamine on February 8 and his hair follicle test conducted 7 days later also came back positive for methamphetamine.

The termination hearing was held on March 1, 2013. Although Mother decided to relinquish her rights, Father elected to proceed with a contested hearing in order to defend against the allegations set forth in the State's petition. At the hearing, Father testified he had four biological children: C.N. and three other children that lived with their mother in California. Beyond the fact that the three other children lived in California, Father provided no further testimony about them.

Father testified that he completed outpatient drug treatment in August 2012 and an inpatient drug treatment program in September 2012. Father readily conceded, however, that he had failed to stay clean despite completing the programs and further admitted he had been using drugs throughout the course of the entire case. And, although Father claimed he could not recall when he used methamphetamine last, he was forced to acknowledge that he last used methamphetamine within the last 3 weeks after being reminded that he tested positive immediately following the February 8, 2013, hearing.

Father also testified that he had been employed by Spirit Aero Systems for the past 8 years but his employer was unaware of his drug problem and his employment was at risk if he continued using illegal drugs. Father later testified that his vehicle had been repossessed and he had to rely on others for transportation, including his wife, who did not have a valid driver's license.

Amanda McKinney, a permanency specialist with Youthville, testified that she had concerns about Father's continued drug use and basic parenting skills. McKinney said Father initially failed to sign releases regarding his drug treatment, which caused her to later question Father's honesty regarding his drug use. To that end, McKinney pointed to Father's poor prognosis upon his release from inpatient treatment at Valley Hope based on his failure to develop the coping skills necessary to avoid relapsing back into drug use. McKinney then testified about Father's failure to inform Youthville of his arrest in September 2012 while this case was pending, which violated the court's order requiring him to notify the agency of any arrests. In sum, McKinney testified that in her opinion it would be in C.N.'s best interests to have Father's parental rights terminated.

*3 Lacey Muller, a permanency support worker for Youthville, also testified. Muller was assigned to supervise visitation between Father and C.N. Father had periods of supervised visitation where Muller was present for the entire visit as well as periods of monitored visitation where she would simply check in at some point during the visit. Father and Mother also combined some of their visits so that they shared a 2-hour visit with C.N. together. Visits typically were 1 hour per parent per week. Muller testified that from the very beginning of the case she set out a timeline and a series of goals and expectations in working towards reintegration and that it was very clear what needed to happen in order for Father to regain custody of his son.

Muller testified that during visits Father spent large amounts of his time either talking or texting on his phone. On a couple of visits, Muller said Father spent as much as 45 minutes of the allotted time on the phone. On one particular visit, Father lost his phone and spent about
25 minutes running from his house to his car looking for it. She further testified that early on during the case, Father would fall asleep for a portion of the visits and during one visit, C.N. actually woke Father up just to get Father to pay attention to him. Muller addressed the sleeping issue with Father directly, reminding him that he only saw his son 1 to 2 hours per week so he should make better use of their time together. In addition, Muller asked Father who would supervise the child if he were sleeping and his wife was not there. Muller testified that Father appeared to be unconcerned about the issues she raised. Muller remarked to Father that C.N. often did not follow direction and needed close supervision, especially since Father lived near a very busy street. Again, Father seemed unconcerned. Muller believed Father was not putting forth any of the effort necessary to begin moving toward reunification with his son; specifically, Father had never seriously committed to maintaining his sobriety or providing a stable and permanent home for his son. Father appeared willing to let his wife put forth the effort necessary to achieve reunification and then life would go back to the way it was before. Muller testified that Father simply was not an involved parent and in her opinion it was in C.N.'s best interests that Father's parental rights be terminated.

Erin Cavanaugh, an outpatient therapist at FCS Counseling, conducted a clinical assessment of Father pursuant to the court's order. Cavanaugh testified Father exhibited unusual behavior both prior to and during his assessment. Before the assessment, Father was sleeping in the lobby and had to be physically awakened for the evaluation. During the evaluation, Father appeared very agitated and exhibited other behaviors consistent with someone who has issues with drugs. Cavanaugh said her main concern with Father was his long history of involvement with drugs and alcohol, in conjunction with the fact that he minimized, and did not seem to understand the importance of, his drug use in relation to the CINC case. In discussing the reason C.N. came into custody, Father told Cavanaugh that he believed it more likely that the police planted the drugs on his child so that they could make an arrest rather than Mother slipping the drugs into the child's pocket to avoid an arrest.

*4 Upon review of all the evidence, viewed in the light most favorable to the State, we find clear and convincing evidence supports the district court's determination that Father was unfit under K.S.A.2012 Supp. 38-2269(b)(3) (Father's excessive use of intoxicating liquors or narcotic or dangerous drugs was of such duration or nature as to render him unable to care for the ongoing physical, mental, or emotional needs of the child), K.S.A.2012 Supp. 38–2269(b)(7) (failure of reasonable efforts made by appropriate public or private agencies to rehabilitate Father), and K.S.A.2012 Supp. 38–2269(b)(8) (lack of effort on the part of Father to adjust his circumstances, conduct, or conditions to meet the needs of the child). The court further found the condition was unlikely to change in the foreseeable future. After making these determinations, the court considered the physical, mental, and emotional health of the child and found it was in C.N.'s best interests for the court to terminate Father's parental rights. See K.S.A.2012 Supp.38–2269(g)(1).

Notably, Father does not appear to challenge the district court's finding that his conduct or condition was unlikely to change in the foreseeable future. But even if he did, we find clear and convincing evidence to support the court's finding in this regard as well. By the time this case made it to the termination hearing in March 2013, C.N. had been out of the home for 11 months. At the hearing, Father admitted he had used methamphetamine within the last 30 days. In his testimony, Father testified that he might need additional inpatient treatment in order to overcome his long-term drug addiction and 3 months of sobriety might be enough time to prove he could stay drug free. But in the 11 months preceding the termination hearing, Father already had inpatient and outpatient treatment and plenty of time to prove that he could stay drug free. Father does not suggest that the time schedule associated with his reintegation plan was unreasonable. And Father presented no testimony or other evidence at the hearing to explain what has changed in his life to inspire him to seriously commit to maintaining sobriety when he failed to be committed to doing so in the past. In fact, his argument on appeal is just the opposite: that his decision to continue using drugs does not render him unable to properly care for his child. We also are mindful that providing a new time schedule for reintegation in circumstances such as the one presented here may fail to properly take into account that cases such as these are to be considered in "child time" and not "adult time." See In re S.D., 41 Kan.App.2d 780, 790, 204 P.3d 1182 (2009) (" 'foreseeable future' is to be considered 'from the child's perspective, not the parents', as time perception of a child differs from that of an adult'").
And finally, although Father does not appear to challenge the district court's conclusion that it would be in C.N.'s best interests to terminate Father's parental rights, we find the testimony given by McKinney, Muller, and Cavanaugh is clear and convincing evidence to support the conclusion.

*5 Affirmed.

All Citations

314 P.3d 900 (Table), 2013 WL 6726129
BEFORE THE KANSAS STATE BOARD OF EDUCATION

In the Matter of the License of
GAGE McGARRY

Case No. 15-PPC-52
OAH No. 15ED0012

REPLY BRIEF OF LICENSEE REGARDING INITIAL ORDER

The licensee, Gage McGarry, by and through counsel, Theodore J. Lickteig, submits the following reply brief regarding the Initial Order of the Professional Practices Commission dated May 11, 2016.

I. Response to "Facts" Section.

The following is the licensee’s response to the parts of the “Facts” section that he contests.

1. In Paragraph 10, the KSDE states that after numerous attempts to contact undersigned counsel about Mr. McGarry submitting results of a hair follicle test, the KSDE finally received a response from undersigned counsel on April 12, 2016.

Undersigned counsel’s records are that:

A) Counsel for KSDE e-mailed to undersigned counsel on April 5, 2016 about having the testing facility e-mail or fax the test results to KSDE offices;

B) Counsel for KSDE e-mailed the administrative law judge on April 8, 2016 asking about where the test facility should submit the test result and noting that KSDE had not yet received a result; and

C) Counsel for KSDE e-mailed undersigned counsel on April 12, 2016, after previously leaving voice mails on April 8 and 11, 2016, about test results. Undersigned counsel responded by e-mail on April 12, 2016 by saying that he
had been out-of-state, had just returned the day before and would call counsel
for KSDE in a few minutes;

D) Counsel for the parties had a phone conversation on April 12, 2016, about the
matter.

2. In Paragraph 11, KSDE states that its version of the phone conversation is
supported by an e-mail attached as Exhibit 1. The licensee denies that the e-mail supports
the position of the KSDE on the point in question.

II. Response to “Argument” Section.

1. Substantial Competent Evidence.

The KSDE states that circumstantial evidence and inferences can be sued as the
foundation upon which substantial competent evidence is built. (Br. at 4, 5) The licensee
does not dispute that statement. What he does maintain is that the Commission did not
have adequate foundation for facts to use to establish circumstances from which
inferences could be reasonably drawn.

2. Mr. McGarry’s Credibility on Last Use.

The KSDE contends that Mr. McGarry’s objection to the hair follicle test is
“belated” and asks the Board to disregard his objection to the hair follicle test. (Br. at 5)
Kansas law only requires that an issue be raised before the “agency.” K.S.A. 77-617. The
Commission is not a separate agency from the Board. There is nothing belated about the
timing of the issue.

The KSDE also complains that Mr. McGarry could have filed a motion for
reconsideration with the Commission. (Br. at 6) However, the KSDE cites no legal
authority for that statement. K.S.A. 77-612(c) only requires such a motion when a statute makes it a prerequisite for review.

The KSDE offers various websites that contain material that support the conclusion that hair follicle testing only recovers a positive result for a ninety-day period before the test. (Br. at 6) These materials do not offer conclusive proof; they only put the matter at issue. Moreover, even if the KSDE's scientific sources are correct, a hair follicle test would only reach back to early 2016. Mr. McGarry's last admitted use was in June of 2015. That leaves a gap of about seven months that would go unverified. Presumably, the Commission could still have disbelieved Mr. McGarry based on the unverified time gap.

The KSDE cites multiple parental rights cases in Kansas in which the Kansas Court of Appeals has relied upon hair follicle tests to reach conclusions about those rights. (Br. at 7) The first response to the observation is that none of the parents in those cases raised an issue over the adequacy or accuracy of the hair follicle test. As a result, none of the opinions offer a ruling about adequacy or accuracy. Mr. McGarry has raised that issue. Second, all of the opinions are unpublished, which means, as the headnote material states, the opinions are not precedential and are not favored for citation.


The KSDE argues that Mr. McGarry has waived an argument that the Commission's order was unreasonable, arbitrary or capricious. (Br. at 9) Mr. McGarry did cite that standard of review with the other applicable standard of review on page 2 of his opening brief and proceeded to argue both. He is at a loss to understand how that argument was "presented without discussion or citation."
4. **Inclusion of Scientific Exhibits.**

The KDSE notes the exhibits to the licensee’s opening brief, but asks the Board to disregard them. (Br. at 9) Curiously, the KDSE offers no counter-study or reference that calls into question the comments and conclusions in the exhibits. Counsel’s bare assertion that the exhibits lack quality is an opinion of counsel. Opinions of counsel are no substitute for evidence.

Respectfully submitted,

Theodore J. Lickteig  
Kan. Bar No. 12977  
Law Offices of Theodore J. Lickteig  
12760 W. 87th Street, Suite 112  
Lenexa, Kansas 66215-2878  
913-894-1090  
tjlawoffice@planetkc.com  
Attorney for Licensee

**CERTIFICATE OF SERVICE**

I, Theodore J. Lickteig, hereby certify that I hand-delivered the above and foregoing on this 11\textsuperscript{th} day of July, 2016 to:

Gwen Kramer  
Secretary, Professional Practices Commission  
Kansas State Department of Education  
900 S.W. Jackson Street  
Topeka, Kansas 66612-1182

And mailed a copy of the above and foregoing first-class postage prepaid on the same date to:

Kelli Broers  
Assistant General Counsel  
Kansas State Department of Education  
900 S.W. Jackson Street, Suite 102  
Topeka, Kansas 66612
Item Title:

Act on the recommendations of the Professional Practices Commission

Board Goals:

Governmental Responsibility

Recommended Motion:

It is moved that the Kansas State Board of Education adopt the findings of fact and recommendations of the Professional Practices Commission.

Explanation of Situation Requiring Action:

1. Ryan Nuessen 16-PPC-12

While licensed, Ryan Nuessen entered a diversion agreement after having been charged with misdemeanor possession of drug paraphernalia. He successfully completed diversion early. Afterwards, Mr. Nuessen applied for an upgrade to a professional license and for a provisional teaching license or provisional school specialist license. After a hearing, the details of which are included in the attached Initial Order, the Professional Practices Commission voted 5 – 0 to recommend to the State Board that Mr. Nuessen’s initial license be renewed and he be issued a provisional special education license, so long as he meets the requirements. The Commission did not recommend that he receive the professional license because agency staff testified he did not qualify for the license and his application should be treated as a request to renew.

2. Jon Sweeney 16-PPC-18

Jon Sweeney applied for an emergency substitute license. Prior to holding any professional licenses, Mr. Sweeney was convicted of felony DUI and misdemeanor possession of marijuana in 2006. Mr. Sweeney made significant life changes after his 2006 convictions. Those changes were discussed at length at his hearing before the Professional Practices Commission, the details of which are included in the attached Initial Order. After hearing all the evidence, including that Mr. Sweeney is already licensed to teach in Missouri, the Commission voted 5 - 0 to recommend to the State Board that Mr. Sweeney’s application for an emergency substitute license be granted.

3. Caitlyn Ulbrich 16-PPC-19

Caitlyn Ulbrich applied for an emergency substitute license. Prior to holding any teaching license, Ms. Ulbrich entered into a diversion agreement after having been charged with misdemeanor theft. She successfully completed diversion. After a hearing, the details of which are included in the attached Initial Order, the Professional Practices Commission voted 5 - 0 to recommend to the State Board that Ms. Ulbrich’s application for an emergency substitute license be granted.

(continued)
4. Benjamin Hendricks 16-PPC-17

While licensed, Benjamin Hendricks was charged for misdemeanor possession of marijuana for an incident that occurred prior to his applying for or receiving his Kansas license. He was not aware of the charges until this year and he entered into a diversion agreement. He will not complete diversion until May 2017. The circumstances were discussed at length at a hearing before the Professional Practices Commission, the details of which are included in the attached Initial Order. After hearing all the evidence, including that Mr. Hendricks has not engaged in any criminal activity since April 2012 and he is currently licensed in Missouri, the Commission voted 5 – 0 to recommend to the State Board that Mr. Hendricks’s license continue and that any application he submits after successfully completing diversion be granted.
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the Application of
Ryan Nuessen

16-PPC-12

INITIAL ORDER

The above-captioned case comes on for hearing before the Professional Practices
Commission (Commission) of the Kansas State Department of Education (KSDE) for
consideration of Ryan Nuessen’s application to upgrade to a professional license.

The hearing on this matter convened on August 1, 2016. Appearing for the Commission
were chairman, Linda Sicck, and members, Justin Henry, John McKinney, Maret Schrader, and
Jessica Snider.

Kelli Broers appeared as counsel for KSDE.

Ryan Nuessen appeared in person and with counsel Michael Hinkin.

FINDINGS OF FACT

1. Ryan Nuessen has been licensed to teach in Kansas since 2013.

2. He applied to upgrade to a professional license on February 3, 2016. Therein, Mr.
Nuessen disclosed he had entered into a diversion agreement after having been charged with a
drug-related crime. He also provided the relevant supporting documents with his application.

3. Those documents showed that on March 25, 2015, Mr. Nuessen was charged with
misdemeanor possession of marijuana and drug paraphernalia in Manhattan, Kansas. He was
24 years old. The possession of marijuana charge was dismissed and he entered a 12-month
diversion agreement on June 23, 2015, for the paraphernalia charge.

4. Mr. Nuessen completed diversion early and his case was dismissed on January 13,
2016.
5. Mr. Nuessen has not engaged in any criminal behavior since March 25, 2015.


7. Mr. Nuessen also provided a June 30, 2016 drug and alcohol evaluation. The evaluation revealed Mr. Nuessen disclosed he had been a frequent marijuana user in the past, but had not used since March 25, 2015. The evaluation concluded he “met the criteria for the following: 305.20 (F12.10) Cannabis Use Disorder (Mild), in Sustained Remission.”

8. Mr. Nuessen submitted three letters of recommendation from three educators. All were aware of his criminal charge.

9. Mr. Nuessen did not qualify for the upgrade he applied for in February 2016. Under those circumstances, KSDE treats the application as an application to renew his initial license.

10. Mr. Nuessen submitted a second application on July 14, 2016. He applied for a provisional teaching license or provisional school specialist license.

CONCLUSIONS OF LAW AND DISCUSSION

1. Pursuant to K.S.A. 72-8501, the Legislature has declared teaching and school administration to be professions in Kansas with all the similar rights, responsibilities, and privileges accorded other legally recognized professions. An educator is in a position of public trust.

2. The Kansas State Board of Education (State Board) may deny an application for misconduct or other just cause including entry into a diversion agreement after being charged with misdemeanor possession of paraphernalia. K.A.R. 91-22-1a.

3. The Commission is charged with investigating and conducting hearings pertaining to allegations of teacher misconduct. K.S.A. 72-8507.
4. The Commission, in determining whether to recommend to the State Board that an individual’s application should be granted, determines the extent of the person’s efforts at rehabilitation as well as the person’s fitness to be a member of the teaching profession. K.A.R. 91-22-1a(g).

5. The Commission finds Mr. Nuessen was truthful on his applications.

6. The Commission finds Mr. Nuessen’s past behavior has ceased to be a factor in his fitness for licensure.

7. The Commission finds that approximately one and a half years have passed since the criminal conduct occurred. There is no evidence Mr. Nuessen has engaged in any subsequent criminal activity. The Commission believes Mr. Nuessen has demonstrated he is rehabilitated and that his past behavior has ceased to be a factor in his fitness for licensure.

8. The Commission finds that Mr. Nuessen is a suitable role model for students, and, he has demonstrated his fitness to teach and is suitable to be placed in a position of public trust as a teacher.

IT IS THEREFORE RECOMMENDED by the Professional Practices Commission to the Kansas State Board of Education, by a vote of 5 - 0, that Mr. Nuessen’s initial license be renewed and that he be issued a provisional special education license, so long as he meets the requirements.

This Initial Order is made and entered this August 1, 2016.

PROFESSIONAL PRACTICES COMMISSION

[Signature]
Linda Sieck, Chairman
Order signed on August 24, 2016.
NOTICE TO LICENSEE/APPLICANT

This Order is not a Final Order and is required to be reviewed by the Kansas State Board of Education in accordance with the provisions of the Kansas Administrative Procedure Act. The State Board will review all issues. Notice of review with the specific date and time will be provided to the parties within 15 days of the review.

You may submit to the State Board for its consideration as part of its review of the Initial Order, a written brief citing legal authority as to why the above recommendation should not be accepted. The brief must be filed with the State Board Secretary at the address indicated below within ten calendar days after service of the Initial Order for transmittal to the State Board.

Any request for oral argument must also be made at that time.

Peggy Hill  
Secretary, Kansas State Board of Education  
900 SW Jackson Street, Suite 600  
Topeka, Kansas 66612

Response briefs are due within ten calendar days after service of the legal brief upon the opposing party. Any reply brief is due five calendar days after service of any response brief upon the opposing party. Any response or reply briefs must also be filed with the State Board Secretary at the address indicated above.
CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2016, a true and correct copy of the above
and foregoing was filed with the Secretary for the Kansas State Board of Education and one (1)
copy was mailed by certified mail, return receipt requested, to:

Ryan Nuessen
2814 Nelson's Landing
Manhattan, Kansas 66502

And by regular mail to:

Michael Hinkin
Clark & Platt, Chtd.
417 Poyntz Avenue
Manhattan, Kansas 66502

And by interoffice mail to:

Kelli Broers
Kansas State Department of Education
900 SW Jackson Street, Suite 102
Topeka, Kansas 66612

Gwen Kramer
Secretary, Professional Practices Commission
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the Application of
Jon Sweeney

16-PPC-18

INITIAL ORDER

The above-captioned case comes on for hearing before the Professional Practices
Commission (Commission) of the Kansas State Department of Education (KSDE) for
consideration of Jon Sweeney’s application for an emergency substitute license.

The hearing on this matter convened on August 1, 2016. Appearing for the Commission
were chairman, Linda Sieck, and members, Justin Henry, John McKinney, Maret Schrader, and
Jessica Snider.

Kelli Broers appeared as counsel for KSDE.

Jon Sweeney appeared in person.

FINDINGS OF FACT

1. Jon Sweeney applied for a Kansas emergency substitute license on March 18, 2016. He
disclosed on his application he had been convicted of a felony and a crime involving theft,
drugs, or a child. He also provided the relevant supporting documents with his application.

2. Mr. Sweeney had an alcohol problem. More specifically, in the 2000s, Mr. Sweeney
was convicted for DUI four times. The fourth instance, in 2006, was a felony (Case No. 07 CR
2004, District Court of Johnson County, Kansas). He was also convicted of misdemeanor
possession of marijuana at that time. He was 29 years old.

3. Post—conviction, Mr. Sweeney changed his life. He met all probation obligations and
completed a recovery program. He sought counseling, and continues to attend counseling and
church-sponsored recovery meetings. Mr. Sweeney has remained sober and drug-free since
4. Additionally, Mr. Sweeney enrolled in undergraduate work where he has maintained excellent grades.

5. Mr. Sweeney has committed himself to community service. He is a cub scout leader; he coaches baseball and football; and he volunteers his time with local charities.

6. Mr. Sweeney has not committed any crimes since 2006.

7. Mr. Sweeney is licensed to teach in Missouri.

CONCLUSIONS OF LAW AND DISCUSSION

1. Pursuant to K.S.A. 72-8501, the Legislature has declared teaching and school administration to be professions in Kansas with all the similar rights, responsibilities, and privileges accorded other legally recognized professions. An educator is in a position of public trust.

2. The Kansas State Board of Education (State Board) may deny an application for misconduct or other just cause including conviction of a felony or conviction of misdemeanor possession of marijuana. K.A.R. 91-22-1a.

3. The Commission is charged with investigating and conducting hearings pertaining to allegations of teacher misconduct. K.S.A. 72-8507.

4. The Commission, in determining whether to recommend to the State Board that an individual's application should be granted, determines the extent of the person's efforts at rehabilitation as well as the person's fitness to be a member of the teaching profession. K.A.R. 91-22-1a(g).

5. The Commission finds Mr. Sweeney was truthful on his application for an emergency substitute license.
6. The Commission finds Mr. Sweeney's past behavior has ceased to be a factor in his fitness for licensure.

7. The Commission finds that approximately 10 years have passed since the criminal conduct occurred. There is no evidence Mr. Sweeney has engaged in any subsequent criminal activity. The Commission believes Mr. Sweeney has demonstrated he is rehabilitated and that his past behavior has ceased to be a factor in his fitness for licensure.

8. The Commission finds that Mr. Sweeney is a suitable role model for students, and, he has demonstrated his fitness to teach and is suitable to be placed in a position of public trust as a teacher.

IT IS THEREFORE RECOMMENDED by the Professional Practices Commission to the Kansas State Board of Education, by a vote of 5 - 0, that Mr. Sweeney's application for an emergency substitute license be granted.

This Initial Order is made and entered this August 1, 2016.

PROFESSIONAL PRACTICES COMMISSION

Linda Sieck, Chairman
Order signed on August 24, 2016.

NOTICE TO LICENSEE/APPLICANT

This Order is not a Final Order and is required to be reviewed by the Kansas State Board of Education in accordance with the provisions of the Kansas Administrative Procedure Act. The State Board will review all issues. Notice of review with the specific date and time will be provided to the parties within 15 days of the review.

You may submit to the State Board for its consideration as part of its review of the Initial Order, a written brief citing legal authority as to why the above recommendation should not be
accepted. The brief must be filed with the State Board Secretary at the address indicated below within ten calendar days after service of the Initial Order for transmittal to the State Board.

Any request for oral argument must also be made at that time.

Peggy Hill
Secretary, Kansas State Board of Education
900 SW Jackson Street, Suite 600
Topeka, Kansas 66612

Response briefs are due within ten calendar days after service of the legal brief upon the opposing party. Any reply brief is due five calendar days after service of any response brief upon the opposing party. Any response or reply briefs must also be filed with the State Board Secretary at the address indicated above.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2016, a true and correct copy of the above and foregoing was filed with the Secretary for the Kansas State Board of Education and one (1) copy was mailed by certified mail, return receipt requested, to:

Jon Sweeney
21724 W. 52nd Street
Shawnee, Kansas 66226

And via interoffice mail to:

Kelli Broers
Kansas State Department of Education
900 SW Jackson Street, Suite 102
Topeka, Kansas 66612

Gwen Kramer
Secretary, Professional Practices Commission
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the Application of
Caitlyn Ulbrich

16-PPC-19

INITIAL ORDER

The above-captioned case comes on for hearing before the Professional Practices Commission (Commission) of the Kansas State Department of Education (KSDE) for consideration of Caitlyn Ulbrich’s application for an emergency substitute license.

The hearing on this matter convened on August 1, 2016. Appearing for the Commission were chairman, Linda Sieck, and members, Justin Henry, John McKinney, Maret Schrader, and Jessica Snider.

Kelli Broers appeared as counsel for KSDE.

Caitlyn Ulbrich appeared in person.

FINDINGS OF FACT

1. Caitlyn Ulbrich applied for an emergency substitute license on April 15, 2016. Therein, she disclosed she had entered into a diversion agreement after having been charged with theft in Winfield, Kansas. She also provided the relevant supporting documents with her application.

2. Those documents showed that on October 27, 2014, Ms. Ulbrich was charged with misdemeanor theft for depriving Walmart of the possession of $13.12 in products. Ms. Ulbrich was 20 years old at the time and held a CNA license.

3. Ms. Ulbrich received a 6 months’ diversion agreement, which she successfully completed.

4. She received no discipline from the licensing authority related to her CNA license.
5. Ms. Ulbrich has not engaged in any criminal behavior since October 27, 2014.

6. Ms. Ulbrich submitted two letters of recommendation, though they were not written for presentation to the Commission.

7. Ms. Ulbrich submitted proof of academic success since this event occurred.

CONCLUSIONS OF LAW AND DISCUSSION

1. Pursuant to K.S.A. 72-8501, the Legislature has declared teaching and school administration to be professions in Kansas with all the similar rights, responsibilities, and privileges accorded other legally recognized professions. An educator is in a position of public trust.

2. The Kansas State Board of Education (State Board) may deny an application for misconduct or other just cause including entry into a diversion agreement after being charged with misdemeanor theft. K.A.R. 91-22-1a.

3. The Commission is charged with investigating and conducting hearings pertaining to allegations of teacher misconduct. K.S.A. 72-8507.

4. The Commission, in determining whether to recommend to the State Board that an individual’s application should be granted, determines the extent of the person’s efforts at rehabilitation as well as the person’s fitness to be a member of the teaching profession. K.A.R. 91-22-1a(g).

5. The Commission finds Ms. Ulbrich was truthful on her application.

6. The Commission finds Ms. Ulbrich’s past behavior has ceased to be a factor in her fitness for licensure.
7. The Commission finds that approximately two years have passed since the criminal conduct occurred. There is no evidence Ms. Ulbrich has engaged in any subsequent criminal activity. The Commission believes she has demonstrated she is rehabilitated and that her past behavior has ceased to be a factor in her fitness for licensure.

8. The Commission finds that Ms. Ulbrich is a suitable role model for students, and, she has demonstrated her fitness to teach and is suitable to be placed in a position of public trust as a teacher.

IT IS THEREFORE RECOMMENDED by the Professional Practices Commission to the Kansas State Board of Education, by a vote of 5 - 0, that Ms. Ulbrich’s application for an emergency substitute license be granted.

This Initial Order is made and entered this August 1, 2016.

PROFESSIONAL PRACTICES COMMISSION

[Signature]
Linda Sieck, Chairman
Order signed on August 24, 2016.

NOTICE TO LICENSEE/APPLICANT

This Order is not a Final Order and is required to be reviewed by the Kansas State Board of Education in accordance with the provisions of the Kansas Administrative Procedure Act. The State Board will review all issues. Notice of review with the specific date and time will be provided to the parties within 15 days of the review.

You may submit to the State Board for its consideration as part of its review of the Initial Order, a written brief citing legal authority as to why the above recommendation should not be accepted. The brief must be filed with the State Board Secretary at the address indicated below.
within ten calendar days after service of the Initial Order for transmittal to the State Board.

Any request for oral argument must also be made at that time.

Peggy Hill
Secretary, Kansas State Board of Education
900 SW Jackson Street, Suite 600
Topeka, Kansas 66612

Response briefs are due within ten calendar days after service of the legal brief upon the opposing party. Any reply brief is due five calendar days after service of any response brief upon the opposing party. Any response or reply briefs must also be filed with the State Board Secretary at the address indicated above.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2016, a true and correct copy of the above and foregoing was filed with the Secretary for the Kansas State Board of Education and one (1) copy was mailed by certified mail, return receipt requested, to:

Caitlyn Ulbrich
14618 101st Road
Winfield, Kansas 67156

And by interoffice mail to:

Kelli Broers
Kansas State Department of Education
900 SW Jackson Street, Suite 102
Topeka, Kansas 66612

Gwen Kramer
Secretary, Professional Practices Commission
BEFORE THE KANSAS STATE BOARD OF EDUCATION
PROFESSIONAL PRACTICES COMMISSION

In the Matter of
the License of
Benjamin Hendricks

16-PPC-17

INITIAL ORDER

The above-captioned case comes on for hearing before the Professional Practices
Commission (Commission) of the Kansas State Department of Education (KSDE) for review of
the license of Benjamin Hendricks.

The hearing on this matter convened on August 1, 2016. Appearing for the Commission
were chairman, Linda Sieck, and members, Justin Henry, John McKinney, Maret Schrader, and
Jessica Snider.

Kelli Broers appeared as counsel for KSDE.

Benjamin Hendricks appeared in person.

FINDINGS OF FACT

1. Benjamin Hendricks has held a Kansas substitute teaching license since September 6,
2013. He is also licensed in Missouri and is currently employed there. He has never taught in
Kansas.

2. Shortly after he obtained his license, on September 27, 2013, Mr. Hendricks was
charged in the District Court of Johnson County, Kansas with misdemeanor possession of
marijuana for conduct that occurred in April 2012, prior to his holding a license (Case No.
13CR02205). He was 35 at the time the crime was committed.

3. A warrant was issued for Mr. Hendricks’s arrest but it was not served. He was not
made aware of the pending charges.
4. In February 2016, the Johnson County Sheriff’s Office finally served the warrant on Mr. Hendricks for the 2013 charge.

5. The case proceeded, and, on May 23, 2016, an executed diversion agreement was filed. The term of the diversion agreement is 12 months. Mr. Hendricks is subject to drug and alcohol screens during the duration of the agreement. At the time of hearing, Mr. Hendricks had been subjected to three screens. All results were negative.

6. Mr. Hendricks has not committed any crimes since April 2012.

CONCLUSIONS OF LAW AND DISCUSSION

1. Pursuant to K.S.A. 72-8501, the Legislature has declared teaching and school administration to be professions in Kansas with all the similar rights, responsibilities, and privileges accorded other legally recognized professions. An educator is in a position of public trust.

2. The Kansas State Board of Education (State Board) may discipline any licensed educator for misconduct or other just cause including entering into a diversion agreement after having been charged with misdemeanor possession of marijuana. K.A.R. 91-22-1a.

3. The Commission is charged with investigating and conducting hearings pertaining to allegations of teacher misconduct. K.S.A. 72-8507.

4. The Commission, in determining whether to recommend to the State Board that an educator should be disciplined, determines the extent of the person’s efforts at rehabilitation as well as the person’s fitness to be a member of the teaching profession. K.A.R. 91-22-1a(g).

5. The Commission finds Mr. Hendricks was truthful on his September 2013 application for a substitute license.

6. The Commission finds Mr. Hendricks’s past behavior has ceased to be a factor in his fitness for
licensure.

7. The Commission finds that more than four years have passed since the criminal conduct occurred and that, through no fault of Mr. Hendricks’s, the issue is just now being resolved within the criminal justice system. There is no evidence Mr. Hendricks has engaged in any subsequent criminal activity. The Commission believes Mr. Hendricks is rehabilitated.

8. The Commission finds that Mr. Hendricks has demonstrated his fitness to teach and is suitable to be placed in a position of public trust as a teacher.

IT IS THEREFORE RECOMMENDED by the Professional Practices Commission to the Kansas State Board of Education, by a vote of 5 - 0, that Mr. Hendricks’s license continue and that any application he submits after successfully completing diversion be granted, assuming he otherwise qualifies.

This Initial Order is made and entered this August 1, 2016.

PROFESSIONAL PRACTICES COMMISSION

\[\underline{\text{Linda Sieck, Chairman}}
\underline{\text{Order signed on August 24, 2016.}}\]

NOTICE TO LICENSEE/APPLICANT

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Peggy Hill  
Secretary, Kansas State Board of Education  
900 SW Jackson Street, Suite 600  
Topeka, Kansas 66612

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2016, a true and correct copy of the above and foregoing was filed with the Secretary for the Kansas State Board of Education and one (1) copy was mailed by certified mail, return receipt requested, to:

Benjamin Hendricks  
4804 W. 70th Street  
Prairie Village, Kansas 66208

And via interoffice mail to:

Kelli Broers  
Kansas State Department of Education  
900 SW Jackson Street, Suite 102  
Topeka, Kansas 66612

[Signature]

Gwen Kramer  
Secretary, Professional Practices Commission
To: Kansas State Board of Education
From: Chairman Jim McNiece
Subject: Discuss 2017 Board Meeting Dates
Board Goals: Board Matters

A draft schedule of Calendar Year 2017 Board Meeting Dates is provided for review and discussion. This is a receive item with anticipated Board action in October.

Two-day meetings are planned as usual on the second Tuesday and Wednesday of each month. Legislative conference calls are currently scheduled for the last Friday of the month during the session.
### Kansas State Board of Education

**DRAFT -- SCHEDULE OF 2017 MEETING DATES**

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KSDE annual conf Oct. 11-13

NASBE annual conf Nov. 1-4
To: Kansas State Board of Education  
From: Peggy Hill  
Subject: Monthly Board Reports & Requests for Future Agenda Items

These updates will include:

1. Committee Reports  
2. Board Attorney’s Report  
3. Individual Board Member Reports and Requests for Future Agenda Items  
4. Chairman’s Report  
   a. NASBE Annual Conference and Delegate Assembly  
   b. KSDE Annual Conference
August 22, 2016

To: Member States of the National Association of State Boards of Education

From: Jim McNiece, President

In accordance with Article VII, Section 1 of the NASBE Bylaws, I am writing to inform you that the Delegate Assembly of the National Association of State Boards of Education will be held in Kansas City, Missouri on October 21 at 9:00 a.m. Central. At this meeting, the Delegates will consider important business for the Association:

A. They will elect the President-Elect of NASBE for 2017
B. They will consider proposed amendments to the Bylaws
C. They will consider additions and changes to NASBE’s Public Education Positions.

The Bylaws specify:

Each dues-paying state shall have one vote, which shall be cast by the voting delegate or alternate who has been certified by the presiding officer of the state board or the board executive, and each delegate or alternate shall be registered with the Credentials Committee. States unable to send a voting delegate may submit a written ballot to vote on agenda items by mail or electronic transmission to the Association headquarters no later than Wednesday, October 5.

Area Directors will be elected by majority vote of the voting states of a particular area; that election will take place during the Area Meetings held on Thursday, October 20, 2016 during the Annual Conference.

Enclosed you will find:

1) Elections Procedures for NASBE Elections

This document contains details on the elections process, additional nominations, and the selection of voting delegates.

2) Proposed amendments to the Bylaws

This document shows the proposed amendments. Words in strikethrough are proposed to be deleted from the current bylaws. Words in italics are proposed to be added. There are three areas of proposed revisions:

- That Article X, Section 4, Public Education Positions Committee be amended to model the Government Affairs Committee membership, and thus be open to any member who wishes to serve and has their board approval. Additionally, that this section also be amended to permit a
board to appoint a NCOSEA and NCSBEE representatives to serve on this committee if no board member is available to serve, with the proviso that membership on this committee is limited to one person per state. These proposed revisions were requested by the current chair of this committee.

- That Article X, Section 6, Governmental Affairs Committee be amended to permit a board to appoint a NCOSEA and NCSBEE representative to serve on this committee if no board member is available to serve. This proposed revision expands the pool of available membership and allows interested states an opportunity to have representation if no board member is available. This proposal has been discussed with the chair of this committee and has his approval.

- That the titles of the President and President-elect of the Board be changed to Chair and Chair-elect, and that the title of the Executive Director be changed to President. This proposal was recommended so that NASBE’s nomenclature for these positions reflects that which is generally used in the business world, and is regarded as a change that will facilitate communication with NASBE’s business partners.

3) Proposed additions to NASBE’s Public Education Positions

This document is the Pre-Amble to NASBE’s list of Public Education Positions, which the Public Education Positions Committee have recommended to introduce NASBE’s list of Public Education Positions.

4) Biographical information about the candidates for President-elect and the NASBE Area Directors.

These will be voted on at the Annual Meeting.

To enable your state’s participation in this important process, designate your state’s delegate and alternate. Send your selection to Stephen Prociw at stephenp@nasbe.org no later than Wednesday, October 5.

Please study these items, and discuss them with your board prior to the Annual Conference so your delegate can vote in accordance with the wishes of your state. Your board chair has a ballot for your state to submit if you will not have a voting delegate present in Kansas City.

For the Bylaws discussion, a motion will be brought to adopt the revision of the bylaws as-proposed by the Board, in one motion. Any delegate who wishes to have the proposals considered and voted separately, one-by-one, may bring a motion to Consider the Proposal Seriatim, and the delegates will then vote on whether to consider the document that way, or adopt it using one motion. Amendments to the proposed amendments will be in-order during consideration, provided that the amendment does not "increase the scope or modification" of the original proposed amendment. (See Roberts Rules of Order, Newly Revised, 11th Edition, pages 594-596, "Amending a Proposed Amendment to the Bylaws."

The NASBE Board recommends adoption of these revisions to our Bylaws, and considers these changes to be in the best interests of our Association. The NASBE Board also recommends the adoption of the enclosed Pre-Amble to the Public Education Positions document.

Thank you for your participation in setting the direction of NASBE. Our association is stronger because of your involvement.
Elections Procedures for NASBE Elections

The election for President-elect of NASBE will take place at the Annual Business Meeting during the Annual Conference in Kansas City, Missouri on October 21, 2016. Candidates will be elected by a majority vote of all voting member states (one vote per state by the voting delegate). The following procedures apply:

- If your state will have a voting delegate present in Kansas City for the Annual Business Meeting, you must notify the NASBE office of the name and email address of that individual by no later than Wednesday, October 5 (contact Stephen Prociw at stephenp@nasbe.org with the name of your delegate).
- If your state will not have a delegate at the Annual Business Meeting, you may vote by mail, email, or fax. Here are the steps:
  - First, notify the Senior Area Director (Dr. Richard Zeile <drzeile@juno.com>).
  - Ensure that your ballot reaches NASBE Headquarters by close of business on Wednesday, October 5.

In the absence of a majority vote, voting member states present at the Annual Business Meeting shall vote by secret ballot to decide the outcome of the election. In the event the second vote does not result in the required majority, the NASBE Board of Directors, excluding any candidates in the election in question, will vote through a secret ballot to determine the outcome of the election.

Area Directors will be elected by majority vote of the voting states of a particular area; that election will take place during the Area Meetings held on Thursday, October 20, 2016 during the Annual Conference. Please follow the procedures listed above to designate your states’ voting delegate or to vote by mail, email, or fax. In the event of a lack of a majority vote, the voting delegates of an area at the Area Meeting will vote to determine the winning candidate.

Additional nominations for the offices of President-elect may be made by written petition signed by voting delegates of five or more states from two or more regions eligible to vote, provided that such nominations are received at NASBE headquarters by Monday, September 5 by email, facsimile, or written report. Additional nominations for the office of Area Director may be made by written petition signed by the voting delegates of three or more states from the region eligible to vote to be received at headquarters by Monday, September 5.

If between the close of nominations and the Annual Business Meeting a candidate(s) withdrawal leaves either one or no candidate for a position, nominations may be made from the floor at the Annual Business Meeting.
Bylaws
of the
National Association of State Boards of Education

Article I.
Name

The name of the Association shall be the National Association of State Boards of Education, Inc. (hereinafter, “NASBE” or “the Association.”)

Article II.
Purposes

The National Association of State Boards of Education will:
A. Be a forum for education policy-makers and for those who influence education policy.
B. Through its adopted processes, synthesize the themes and ideas which describe effective, student-focused education policy into positions of advocacy or into additional organizational beliefs.
C. Attract and retain staff members who are highly-qualified to support inquiry and analysis in the areas of concern to education policy-makers. NASBE will further provide forums for staff experts to work with members and other invited participants on important education issues.
D. Examine the issues and themes of education policy and provide information, comment, or advice to members and to states which desire to examine such issues for their states' policy creation. NASBE will provide expertise in how such policy issues will be affected by states' diverse statutory and governance requirements.
E. Provide a variety of programs and member services that can be used by state boards and state board members to improve their knowledge of education issues or their skills in being an effective board member and education policy-maker.

Article III.
Membership

Section 1. Voting Members. Any state, the District of Columbia, or any territorial board (hereinafter, "state") having jurisdiction over elementary and secondary education may become an equal voting member of the Association upon payment of required dues. In states not having boards of education, the chief state school officer may become a voting member of the Association upon payment by the state or territory of the required dues.

Section 2. Non-Voting Members. Non-voting members of the Association shall receive all information services of the Association as defined by the Board of Directors; may attend and participate in all meetings and conferences of the Association; and shall be eligible, if appointed, to serve as voting members of committees and study groups of the Association, with the exception of the Governmental Affairs Committee and the Public Education Positions Committee, and shall not be voting members of the Association as described in Section 1.

NASBE Bylaws as Approved by the 2015 Delegate Assembly - 1
A. Associate Members. Associate members are those individuals who are not state board of education members or executive directors to state boards of education and who pay the required dues. In addition, an association or institution interested in the purposes of this Association may, upon approval of the Board of Directors and payment of dues fixed by the Board, become an associate member.

B. Affiliate Members. The National Association of State Boards of Education recognizes two affiliate members: The National Council of State Board of Education Executives (NCSBEE) and The National Council of State Education Attorneys (NCOSEA). A state board of education executive whose state board is a dues-paying member of the Association is thereby a member of NCSBEE and an affiliate member of NASBE. A state education attorney, who pays dues to NCOSEA, as fixed by the NASBE Board, is thereby a member of NCOSEA and an affiliate member of NASBE.

C. Former State Board Members. Any former member of a state board of education may, upon payment of dues fixed by the Board of Directors, become a member of the Association, and the Board of Directors may establish a Life Membership for former state board members, and fix the dues thereof.

D. Honorary Life Members. The Executive Committee of the Board of Directors may confer honorary life membership upon individuals who, by their actions, have demonstrated a high degree of devotion to the purposes of the Association. Association presidents chairs will become honorary life members upon completion of their presidency.

Article IV.
Organization

Section 1. Areas. The Association is divided into the following areas:

Central - Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Wisconsin.


Southern - Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, West Virginia.


Article V.
Executive Officers

Section 1. Executive Officers and duties. The Executive Officers of the Association shall be a President Chair, President-elect Chair-elect, Secretary-Treasurer, and Immediate Past President Chair. The Executive Officers shall perform the duties prescribed by these bylaws and by the parliamentary authority adopted by the Association, and as directed by the Board and/or the Delegate Assembly. The President Chair shall preside at the Annual Meeting and at other meetings, shall be chairman of the Board of Directors, shall appoint committees, and may serve
as a non-voting member ex-officio of each committee except the Nominations Committee. The President-elect Chair-elect shall assist the President Chair, preside in the President's Chair's absence, and succeed to the office of President Chair if that office becomes vacant. The Immediate Past President Chair shall chair the Nominations Committee and assist the President Chair when requested. The Secretary-Treasurer shall chair the Finance and Audit Committee, and be responsible for the custody and accounting of all assets of the Association.

Section 2. Qualifications. All candidates must submit a letter of support from their state board of education, and at the time of election to office may not be in the final year of a term of service on their state board of education. The Board of Directors may, by a two-thirds vote, set aside this limitation when unusual circumstances occur. An officer shall be a member of a dues-paying state board of education, except that any person actually assuming the office of President Chair shall be eligible to complete the term as President Chair and Immediate Past President Chair even though his or her state board term has expired, or the state is no longer a member of the Association. The Secretary-Treasurer shall likewise be eligible to complete the term even if his or her state board term has expired, or the state is no longer a member of the Association. Any person holding office under the above exceptions must maintain individual membership in the Association as a Former State Board Member, but this shall not be construed as to deny such an officer the right to vote in board meetings or board committee meetings. Candidates for President-elect Chair-elect shall have current or prior service on the Board of Directors, or have a demonstrated commitment to the Association by significant service to the Association. No member may hold more than one NASBE office at a time.

Section 3. Nomination. The Nominations Committee shall nominate at least one candidate each year for President-elect Chair-elect, at least one candidate each year for Area Director for each Area, and at least one candidate every second year for Secretary-Treasurer. The Nominations Committee shall solicit recommendations for candidates from the membership. Such recommendations must be received at NASBE headquarters at least 48 hours prior to the meeting of the Nominations Committee. No current member of the Nominations Committee may be nominated as a candidate for an office under this Section. Additional nominations for President-elect Chair-elect and Secretary-Treasurer may be made by written petition signed by voting delegates of at least five states from two or more regions. Additional nominations for Area Director may be made by written petition signed by the voting delegates of three or more states from the Area. Such petitions must be received 45 days prior to the Annual Meeting. If by the time of the Annual Meeting a candidate's withdrawal leaves just one candidate, or no candidate, for an office, then nominations may be made from the floor during the Annual Meeting, or during the Area Meeting in the case of electing Area Directors.

Section 4. Election Procedure. A state unable to send a delegate may send a written ballot, for any or all offices, by mail or electronic transmission to the Association headquarters at least 15 days before the start of the Annual Meeting. The election of Area Directors shall be at the Area Meeting during the Annual Meeting, by majority vote of the delegates from that Area and any written ballots submitted under the provisions of this Section, above, following the introduction of the nominated candidate(s) by an incumbent Area Director. If no candidate receives a majority
vote, the election shall be decided by majority vote of the delegates present and voting by secret ballot. The election of President-elect Chair-elect and Secretary-Treasurer shall be following the report of the Nominations Committee at the Annual Meeting, by majority vote of the delegates and any written ballots submitted under the provisions of this Section, above. If no candidate receives a majority vote, the delegates present and voting shall cast a second secret ballot to decide the election. In the event that this second ballot does not result in a majority for any candidate, the Board of Directors, excluding any candidates in the pending election who may also be members of the Board, shall decide the election by secret ballot. A New Member Representative shall be elected annually by majority vote of the members attending the New Member Institute.

Section 5. Term of Office. The President-elect Chair-elect shall take office January 1st following election, and serve one year, becoming President Chair January 1st of the following year, and Immediate Past President Chair on the following January 1st, for one year, or until a successor is elected. The Secretary-Treasurer shall take office January 1st following election, and serve two years, or until a successor is elected. Area Directors shall take office January 1st following election and serve two years (with staggered terms,) or until a successor is elected. No person may serve as Area Director more than two consecutive two-year terms. The New Member Representative shall take office January 1st following election, and serve two years (with staggered terms,) or until a successor is elected.

Section 6. Vacancies. When a vacancy occurs in an Executive Office, the Board of Directors shall vote to appoint a member who meets the eligibility requirements to complete the term for the vacant office. A President-elect Chair-elect who is so appointed shall succeed to the offices of President Chair, and Immediate Past President Chair, in the same manner as if he or she had been elected President-elect Chair-elect.

Section 7. Indemnification. Any officer, employee, agent, or other person serving at the request of the Association shall be indemnified by the Association against civil or administrative litigation expenses, judgments, and amounts paid in settlement of civil or administrative actions against any such person, provided that such person acted in good faith and reasonably believed that such actions were in the best interest of the Association, and provided further that such indemnification and the amount of any settlement paid are approved in advance by the majority the Board of Directors, or a court or agency having jurisdiction of the matter. This indemnification shall not include criminal litigation.

Section 8. Removal. An Executive Officer may be removed from office by a two-thirds vote of a quorum of the Association’s Board of Directors for good cause, following a statement of charges and an opportunity for the Executive Officer to be heard by the Board of Directors. For purposes of this Section, good cause shall be defined as (a) a conviction of a crime involving theft, dishonesty, misconduct by a public official, or moral turpitude; (b) a sanction by a professional licensing body for professional misconduct involving theft, dishonesty, misconduct by a professional, or moral turpitude; or (c) any conduct reflecting adversely on the Officer’s fitness to serve the Association, regardless of whether the conduct resulted in a criminal conviction or
professional sanction. A vacancy created by a removal under this Section shall be filled pursuant to Section 6 of this Article.

Article VI.
Board of Directors

Section 1. Board Composition. The Executive Officers, two Area Directors elected by each Area, and two New Member Representatives, together with the presiding officers of the National Council of State Education Attorneys and the National Council of State Board of Education Executives, shall constitute the Board of Directors for the Association. The presiding officers of NCOSEA and NCSBEE shall be voting members ex-officio of the Board.

Section 2. Duties and Powers. The Board shall have general supervision of the business and welfare of the Association between Annual Meetings; shall appoint an executive director a President of the Association to serve at the Board’s pleasure, and fix the compensation thereof; shall adopt an annual budget for the Association, and shall in all matters be subject to the directives of the Delegate Assembly at the Annual Meeting. The board shall establish the policies and goals of the Association, and may delegate to the Executive Committee, as appropriate.

Section 3. Board Meetings. Meetings of the Board of Directors may be called by the President as the business of the Association may require. The President shall convene the board at the written request of four members of the Board. Written notice of Board meetings and a copy of the agenda shall be given by the President to the members of the Board. A majority of the members of the Board, not counting vacant seats, shall constitute a quorum. A quorum may be achieved through the use of teleconference and/or other appropriate technology, and board members attending by electronic means shall be entitled to debate, vote, and otherwise participate as if they were present. Two absences by a member of the Board which are not excused by a majority vote of the Board will result in the position being declared vacant.

Section 4. Vacancies. When a vacancy occurs on the Board of Directors, the Board of Directors shall vote to appoint a member who meets the eligibility requirements to complete the term for the vacant office. If any member of the Board of Directors shall resign from, or be removed for a reason other than expiration of his or her term from membership on the state board of education, the position on the Board of Directors shall be considered vacated, and the vacancy shall be filled as herein provided.

Section 5. Removal. A member of the Board of Directors may be removed from office by a two-thirds vote of a quorum of the Association’s Board of Directors for good cause, following a statement of charges and an opportunity for the Board member to be heard by the Board of Directors. For purposes of this Section, “good cause” shall be defined as (a) a conviction of a crime involving theft, dishonesty, misconduct by a public official, or moral turpitude; (b) a sanction by a professional licensing body for professional misconduct involving theft, dishonesty, misconduct by a professional, or moral turpitude; or (c) any conduct reflecting
adversely on the Board member’s fitness to serve the Association, regardless of whether the conduct resulted in a criminal conviction or professional sanction. A vacancy created by a removal under this Section shall be filled pursuant to Section 4 of this Article.

Article VII.
Annual Meeting

Section 1. Time, Place, and Notice. The Annual Meeting of the Association shall be held at a time and place determined by the Board of Directors, with at least 60 days written notice to all members by the President Chair.

Section 2. Delegate Assembly. The Delegate Assembly shall exercise ultimate authority over the Association, and may delegate powers and duties to the Board of Directors, committees, or particular officers of the Association. Each dues-paying state shall have one vote, which shall be cast by the voting delegate or alternate who has been certified by the presiding officer of the state board or the board executive, and each delegate or alternate shall be registered with the Credentials Committee. States unable to send a voting delegate may submit a written ballot to vote on agenda items by mail or electronic transmission to the Association headquarters at least 15 days before the start of the Annual Meeting. Fifteen delegates present shall constitute a quorum.

Section 3. Duties of the Delegate Assembly. The Delegate Assembly shall convene at the Annual Meeting and shall elect officers of the Association; receive and act on reports and recommendations from the Board of Directors, officers, committees, the Executive Director President and others; confer honors and recognition to deserving individuals and organizations; and otherwise act to advance the cause of the Association.

Article VIII.
Dues

Annual membership dues and method of payment, or any changes thereto, shall be approved by the Board of Directors.

Article IX.
Fiscal Year

The fiscal year for the Association shall be January 1 through December 31.

Article X.
Committees

Section 1. General Provisions for Committees. A majority of the members of any committee shall constitute a quorum for that committee. A quorum may be achieved through the use of
teleconference and/or other appropriate technology, and members attending by electronic means shall be entitled to debate, vote, and otherwise participate as if they were present. Except as otherwise noted herein, the terms of members appointed to a committee expire at the end of the fiscal year. When the President determines that a vacancy exists on a committee, the President may appoint an eligible member to fill such vacancy for the remainder of the term.

Section 2. Executive Committee. The Executive Committee shall have four members, namely the Chairman, the President-elect, the Secretary-Treasurer, and the Immediate Past President. The Executive Committee shall evaluate the Executive Director and perform the routine business of the association and other affairs as delegated by the Board of Directors, and shall report fully to the Board of Directors.

Section 3. Nominations Committee. The Nominations Committee shall have seven members: the Immediate Past President, who shall be chairman and vote only in case of a tie; one representative from each Area, and two members elected at-large by the Delegate Assembly during the Annual Meeting. Each Area representative to the Nominations Committee shall be elected at the Area Meeting during the Annual Meeting, and all members must be current members of a state board of education. Priority for appointment to this committee shall be a past Area Director from each Area. Each area will also have an alternate, who shall be recommended by the current Area Directors and appointed by the President. The terms of the members are one year, and all members other than the Immediate Past President are eligible to serve a maximum of three consecutive years.

Section 4. Public Education Positions Committee. The Public Education Positions Committee shall have nine members, appointed to one year terms, consisting of the four junior Area Directors, the senior New Member Representative, and four additional members appointed by the President, preferably from each Area. The Public Education Positions Committee shall be open to any member who wishes to serve on the Committee and has their board approval. If no board member is available, the board may appoint a member of NCSBEE or NCOSEA from that state. However, membership will be limited to one person per state. The chair of the Committee shall be appointed from the members of the Committee by the President with Board approval, and must have served previously on the Committee. No member may serve more than two consecutive terms. The Committee shall recommend Public Education Positions to the Delegate Assembly for adoption as Positions of the Association. When a member state's proposed Position or amendment to a Position is adopted by the Committee for recommendation to the Delegate Assembly, the state will be notified within five days. New proposed Positions, and amendments to Positions, which are not adopted by the Committee may be re-submitted by the state for consideration by the Delegate Assembly at the Annual Meeting if presented to Association headquarters not less than 45 days before the Annual Meeting, for distribution to the membership not less than 40 days before the Annual Meeting. The printed Public Education Positions as adopted by the Committee for recommendation to the Delegate Assembly may record the dissenting votes by state designation and shall provide a section for written minority statements.

NASBE Bylaws as Approved by the 2015 Delegate Assembly - 7
Section 5. Finance and Audit Committee. The Finance and Audit Committee shall have at least four and not more than seven members: the Secretary-Treasurer, who shall be chairman, and additional members appointed to three year terms by the President Chair with Board approval. Members may serve no more than two consecutive terms. The Committee shall review the financial condition of the Association, its dues structures, budget, investments, and the manner in which staff have managed the finances of the Association. The Committee shall oversee the Association’s annual independent audit, and shall recommend to the Board a proposed budget of the Association for the next fiscal year, and may make other recommendations to the Delegate Assembly at the Annual Business Meeting. The Committee shall recommend to the Board of Directors any changes or improvements in the financial management of the Association.

Section 6. Governmental Affairs Committee. The Governmental Affairs Committee shall be open to any member who wishes to serve on the Committee and has their board approval. If no board member is available, the board may appoint a member of NCSBEE or NCOSEA from that state. However, membership will be limited to one person per state. The chair of the Committee will be appointed from the members of the Committee by the Chair with Board approval, and must have served previously on the Committee. The chair of the Committee will be appointed by the President with Board approval, and must have served previously on the Committee. The committee shall recommend to the Board of Directors, by at least a two-thirds majority, positions on Federal legislation, agency regulations, or other policy issues of national scope.

Section 7. Awards Committee. The Awards Committee shall consist of five NASBE members including the President-elect Chair-elect. The President-elect Chair-elect of NASBE shall serve on the committee as chairman, but shall not vote except in a tie. Awards recommended by the Committee shall be approved by the Board of Directors.

Section 8. Credentials Committee. The Credentials Committee shall have at least three but no more than five members, appointed by the President Chair. The Committee shall register a voting delegate and alternate from each state to vote at the Annual Business Meeting; shall prepare for the Secretary-Treasurer a final roster of delegates and alternates, by state, prior to the call to order of the Delegate Assembly at the Annual Meeting; and shall resolve, by majority vote, any questions, challenges, or disputes concerning the validity of any delegate or alternate.

Section 9. Ad Hoc Committees. Ad Hoc Committees may be established by the Board of Directors as needed to further the purposes of the Association. The Board shall determine the function, term, number of members, and budget of each committee and the President Chair shall appoint the members and the chair. The Board may reserve, at the time the committee is established, the right to ratify the President’s Chair’s appointments.

Section 10. Removal. A member of a committee who is not a member of the Board of Directors may be removed from office by a two-thirds vote of a quorum of the Association’s Board of Directors for good cause, following a statement of charges and an opportunity for the committee member to be heard by the Board of Directors. For purposes of this Section, “good cause” shall
be defined as (a) a conviction of a crime involving theft, dishonesty, misconduct by a public official, or moral turpitude; (b) a sanction by a professional licensing body for professional misconduct involving theft, dishonesty, misconduct by a professional, or moral turpitude; or (c) any conduct reflecting adversely on the committee member’s fitness to serve the Association, regardless of whether the conduct resulted in a criminal conviction or professional sanction. A vacancy created by a removal under this Section shall be filled pursuant to Section 1 of this Article. Removal and replacement of a member of a committee who is also a member of the Board of Directors shall be pursuant to the terms of Article V.

**Article XI.**

**Amendment of Bylaws**

**Section 1. Proposed Amendments from the Board.** The Board of Directors will review the bylaws of the Association on an “as-needed” basis. In the event the Board should recommend a bylaws amendment to the membership, the proposed amendment(s) shall be distributed to the Association membership at least 60 days prior to the start of the Annual Meeting.

**Section 2. Proposed Amendments from the Membership.** In addition to amendments submitted by the Board of Directors, proposed amendments may be submitted by any member state board to the Secretary-Treasurer at least 65 days prior to the Annual Meeting, for distribution to the membership at least 60 days prior to the Annual Meeting.

**Section 3. Adoption Requirement.** Amendments shall be adopted by at least a two-thirds vote of the Delegate Assembly and any ballots received under the provisions of Section 2 of Article VII, unless the proposed amendments have been further amended during consideration by the Delegate Assembly, in which case the written ballots submitted in advance shall not be counted, and adoption of the amended amendments shall be by a two-thirds vote only of the delegates present.

**Article XII.**

**Conduct of Association Business**

**Section 1. Parliamentary Authority.** The procedures at all meetings shall be governed by the current edition of Robert’s Rules of Order, Newly Revised, except as modified by these bylaws and any standing rules of the Board of Directors, and/or the Delegate Assembly at the Annual Meeting.

**Section 2. Conflict of Interest.** No Board or Committee member may participate in a matter in which the member has a conflict of interest. At a minimum, a conflict of interest arises when a member has a personal or financial interest in the matter. The Board of Directors may adopt additional conflict of interest policies and procedures.
Re: Public Education Positions Committee

Preamble

Throughout history, Congress has recognized the preeminent role of the states in education. NASBE believes that public education is the most fundamental obligation of state government. Major policy and oversight responsibility is placed in constitutionally or statutorily created state boards, composed primarily of lay citizens. State boards have the primary responsibility for governing education, including vocational education, for setting educational policy, goals and priorities based on the best available information and research, and for continuously evaluating educational progress. While citizens who serve on state boards of education may be chosen because they are from a specific region, or constituency, they should represent all the students in the state. The charge to state boards is setting the long-term vision and direction that will make education meaningful for every student. Schools must be dynamic educational institutions that graduate students with the knowledge and skills necessary to thrive in the world. This requires a long term commitment of time, energy, and resources.

State Boards of Education

While the state role of state board members is often clearly defined by state constitutions or statutes, all state board members, regardless of how chosen, need to understand and respond to national issues that have an impact on education in their states. The educationally effective governing structure for education within a state includes a state board of education that is a policy leader, with the policies administered by a chief state school officer.
Candidate for President-Elect

John R. Kelly

John R. Kelly is a native Mississippian, having grown up on his family’s farm in the central part of the state. He has lived on the coast for the past 42 years. Since 2006 he has served as the Chief Administrative Officer (CAO) for Mississippi’s second largest city, Gulfport. As CAO, he is responsible for the day to day operations of the city.

John spent most of his career as a senior executive with the Department of Defense. At the time of his retirement in December 2005, he worked as Regional Director for Community and Family support with Navy Region South East in Jacksonville, FL. As Regional Director, he directed the operation of a broad multifaceted family support program that encompassed psychological testing/counseling, family housing, skills for living training, family advocacy and funeral honors details for service members and their families. His region included the 14 naval installations around the South Eastern United States, Cuba and Puerto Rico.

Kelly has a solid record of community and social involvement. He was chosen by the Sun Herald as one of the Gulf Coast Outstanding Community Leaders for 2011. He was appointed in June 2011 by former Governor Haley Barbour to the State Board of Education where he now serves as chairman. He has also chaired that board’s accountability committee. This committee works with the board to determine ratings for all schools across the state. He served as chairman of the National Board of Director for the American Cancer Society from 1999-2002. He was the 1st person of color to chair this prestigious board with an annual budget of more than a billion dollars. He is a former President and Chief Volunteer Officer for South Mississippi’s United Way. Other boards formally chaired by Dr. Kelly includes, the Boys & Girls club of South Mississippi, Gulfport Job Corps Center, Gulf Coast Medical Center and Salvation Army. He currently serves on several for profit boards as well.

John earned a bachelor degree from Alcorn State University (1971), masters from Wayne State University (1972) and a doctorate from University of Southern Mississippi (1979). He is married to Dr. Bernell T. Kelly, who is a recent retired principal with the Biloxi School District. Together they have two adult daughters, Felice and Kristi. They also have a granddaughter, Raegan Kelly Johnson, a 2nd year college student and a three-year old grandson Dallas.
Area Director for the Central Region

O. Victor Lenz, Jr.

Public school education has been a critical element of my experience for my entire life. As a product of the public school system, I was very well prepared for college and a career. During my 39-year career in public education, I was able to make a difference in the lives of students and the effectiveness of the school experience for our students. Since retirement, I have devoted a major portion of my time to school board service at both the local and state level. It is critical that we continue to improve our public schools to meet the ever more complicated skill sets that our students need to succeed.

One of the founding fathers of our nation, Thomas Jefferson, stated, "An educated citizenry is the foundation of our democracy." In order to have an educated citizenry, we must have a strong system of public education, and every student must have access to a quality, free public education. I am committed to advocating, in every possible way, for legislation and support that will improve the educational opportunity for every student in our country. I am also committed to maintaining community schools for students throughout our nation. It is critical that every student have the opportunity to get a good education in his or her own community without having to endure extreme hardships and hurdles.

I have worked for these ideals at both the local and state level and would welcome the opportunity to expand those efforts through serving on the board of the National Association of State Boards of Education. Thank you for considering my bid for election to the NASBE Board as a Central Area Director.
To: Board Members
From: Peggy Hill
Subject: Board Member Travel

Travel requests submitted prior to the meeting, and any announced changes, will be considered for approval by the Board.

Upcoming deadlines for reporting salary/payroll information to the Board office are:

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